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Jeremiah Smith

LIFE OF

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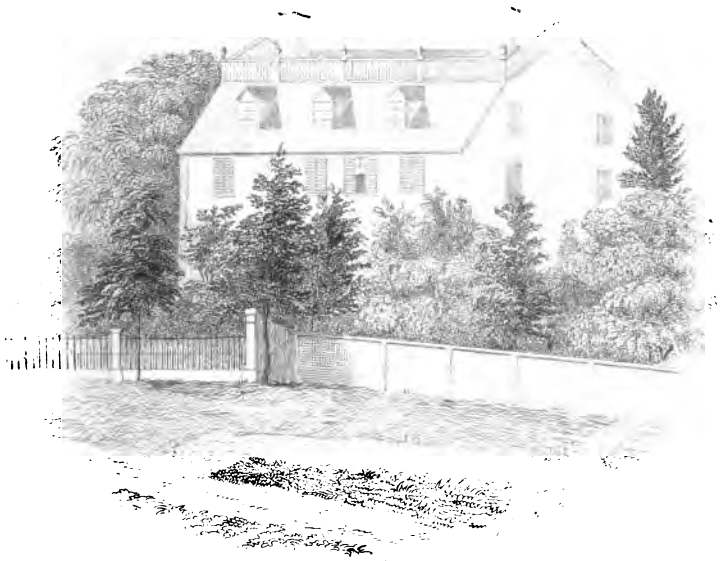

BOSTON.
CHARLES C. LITTLE AND JAMES BROWN.
MDCCCXLV.

LIFE

OF THE

HON. JEREMIAH SMITH, LL.D.

MEMBER OF CONGRESS DURING WASHINGTON'S ADMINISTRATION,
JUDGE OF THE UNITED STATES CIRCUIT COURT,
CHIEF JUSTICE OF NEW HAMPSHIRE, ETC.

BY JOHN H. MORISON.

BOSTON:
CHARLES C. LITTLE AND JAMES BROWN.

1845.

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PREFACE.

After Judge Smith's death, in the autumn of 1842, his papers were placed at my disposal, and from them, chiefly, this memoir has been prepared. Scarcely a document of any kind has been here introduced that was ever before published; and where facts, before known, are stated, I have usually done it on the authority of the original evidence to be found among Judge Smith's papers.

Many of the letters here given are from the original draughts which he preserved, and will sometimes be found to differ verbally from the copies that were sent. He was in the habit of transferring to his common-place book whatever particularly struck him in his reading, accompanying his extracts often by remarks of his own. It is possible that, in two or three instances, I may have copied as his, what he had only transcribed from others.

It can hardly be necessary to say to the intelligent reader, that I am not to be held responsible for Judge Smith's actions or opinions, but only for the accuracy of my statements in respect to them. I have endeavored to give a faithful transcript of his mind and character, and have knowingly withheld nothing from the fear of any unfavorable influence it might have on his reputation. The errors and failings of distinguished men are not the least instructive part of their lives.

The preparation of this biography has been to me a work of grateful affection, in which I have been cheered and aided by the kindness of men, whom it might savor of ostentation here to name; and I cannot now dismiss it without the hope and the prayer, that it may do something for the cause of public justice, of private intelligence and virtue, and that the picture especially, which it contains, of an old age, happy, useful, and honored, may be not without its influence on others.

J. H. M.

Salem, April 14, 1845.

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LIFE OF JUDGE SMITH.

CHAPTER I.

1759 — 1786.

BIRTH — CHILDHOOD — IN SCHOOL — AT COLLEGE — TEACHER AND LAW STUDENT AT BARNSTABLE, ANDOVER, SALEM.

Jeremiah Smith was born in Peterborough, New Hampshire, the 29th of November, 1759. An attempt had been made to settle the town as early as 1739, but the inhabitants were driven off several times by the Indians, and no families were established there till 1749. From that time, though having to deal with a rugged soil and all the hardships of a first settlement, the little colony, embosomed amid the mountains, went on increasing; and, in 1759, when they petitioned for a charter, there were from forty-five to fifty families, living mostly in log houses, and having few of what are now considered the essentials of life.

Jeremiah was the fifth of seven sons. His father, William Smith, who, like the rest of the colonists, had immigrated from the north of Ireland, was, on the paternal side, Scotch, and on the maternal, of English descent. This will account for his being the only man in the town, at that time, who did not speak a broad Scotch dialect. He was modest, gentle, discreet, and devout. No man in the infant settlement was more respected for the substantial qualities of mind and character. He was a justice of the peace, and, in 1774, a member of the Provincial Congress. He wrote a good hand, and after he was an old man took pleasure in referring to a compliment he had received when a boy, from his schoolmaster in Ireland, who wrote in his copy-book,

> "William Smith, of Moneymar,
> Beats his master far and awar;
> I mean in writing,
> Not inditing."

On the 31st of December, 1751, "the coldest day he ever knew," he married Elizabeth, daughter of John and Margaret Morison. She was a woman of energy and spirit, and, like many such women, "kept the scold a-going,"[1] as I was told by an old man, who remembers her as she was more than eighty years ago. She had ten children in twelve years, but found time to engage both in the in-door and out-door work. She assisted in harvesting the

[1] That the scolding was not so incessant as some that prevailed in the neighborhood, may be inferred from the answer of Judge Smith's elder brother to Mr. Miller. "Johnny," said Mr. Miller, "does your mother scold?" "Yes," said Johnny, "*sometimes*." "That 's not *always*; my wife scolds *etarnally*."

corn, and was known to dig sixteen bushels of potatoes in a day. She was an excellent manager of her household affairs. The question, what they were to have to eat, was never allowed to be asked by the children; and they went through life, like Dr. Franklin, who had been brought up under a similar regulation, with great indifference to such things. One of the sons, however, who was afterwards a member of congress, once wished that he "was a king; for then he would have as much barley broth as he wanted to eat." One of the daughters once came home crying, and told her mother that the little girls whom she had been visiting laughed at her, because she had not on a jerkin. "Never mind," said her mother, "ye'll hae jerkins when they hae nane." The prophecy was a true one. The two silk gowns that Mrs. Smith had before she was married, were the only ones she ever owned, and are now in the possession of her grandchildren. She never wore them, even to meeting, except on sacrament days and when her children were to be baptized. Her linen aprons, the only article of finery worn by herself or daughters, were washed and plaited once a year. They were carried in the hand, put on as they were entering the meeting-house, and folded up "in the last singing." There was one handsome baby's dress, which went down successively to all ten of the children.

Mrs. Smith was a good singer of Scotch songs; her own children, as well as those of the neighbors, were always glad to leave their noisy sports, and crowd round her to hear her sing. Her notions of

home discipline were not of the most indulgent kind. It is said that once, on returning from her brother-in-law's, she said to her husband, "I've been to Samooel Moore's, and there's family government, so there is; and if you was worth your ears, you'd keep your boys at home." Her husband, having calmly heard her through, asked if she remembered the calf they kept tied in the barn so long. "Ay, ay." "And do you mind that when we let it out, it run till it broke its leg?" It is said that on some unusual occasion, a husking, perhaps, or log-rolling, a neighbor's punch-bowl had been borrowed. Jerry, as he was always called, playing about the room, upset a shelf. In the confusion that ensued, his mother, of course, attended to her maternal duties first, and gave the boy a smart whipping. But on going back, and finding, to her consternation, that neighbor Miller's punch-bowl had been broken, she concluded that the punishment had not been at all proportioned to the offence, and, seizing the child, whipped him severely a second time. She was, however, a woman of sound sense and kind feelings; and, notwithstanding the punch-bowl, was generally much more indulgent towards her children in practice than in theory. Jeremiah could remember but two or three whippings that had fallen to his share.

A story, with which Judge Smith used to amuse the infancy of the son of his old age, may be given here as it is told by his son. "When Jeremiah was about three years old, he and his two elder brothers, William and James, playing about the well, fourteen feet deep, were reaching over to see which could

reach the farthest stone. Jeremiah, in his zeal to go beyond the others, reached so far as to lose his balance, and fall in. James and William rushed into the house, and waked their mother, who was lying down, and the only person in it, with the sound of 'Jerry's in the well, Jerry's in the well!' She hastened to the well; but said, "he is not here, I see nothing of him." Presently a circle appeared in the water, and a little white head rose to the surface. Her screams attracted the attention of Mr. Miller, who was hoeing in a neighboring field, and who, with the reckless courage of an insane man, (which he was at intervals,) went directly down into the well, and, as the little white head rose again for the last time to the surface, seized it by the hair and shouted 'Let down the bucket.' The little boy was put into it, drawn safely up, and, after being rolled on the grass, was soon perfectly restored." Jeremiah had two other escapes from drowning, almost as narrow as this.

By spinning and weaving linen, Mrs. Smith did her full share towards supporting the family. Once, after Jeremiah had got a little book knowledge, he undertook to comment on his mother's language, as ungrammatical. "But wha taught you langage?" she replied. "It was my wheel; and when ye 'll hae spun as many lang threeds to teach me grammar as I hae to teach you, I'll talk better grammar."

Mrs. Smith was a strict Presbyterian in her faith, and in truth a devout woman. A niece of hers, a young orphan girl, who lived in her house, had been guilty of some great offence, and there was a gather-

ing of the connections to consider what should be done. A sister of Mrs. Smith, who was looked upon as one of the elect, proposed to "gar her into the barn to pray;" as if the poor, half-witted, friendless thing were not fit even to be prayed with, except among the cattle. Mrs. Smith indignantly rejected the proposal; but it had made on the minds of her children an impression as lasting, as it was unfavorable to everything like a proud and sanctimonious faith.

Among those who visited much at the house, and whose influence undoubtedly continued through life with his nephews, was Mrs. Smith's brother, Moses Morison. He was the wit of the town, and had a rare faculty of entertaining the young by his extempore romances. Many anecdotes of him are handed down, full of the peculiar humor for which the Smiths were afterwards distinguished. He had been building a mill, in a neighboring town, for a man named Patterson, and on his return home was asked if Patterson had a good mill-seat. "Ay, very good." "And has he plenty of water?" "Ay, plenty; but he maun cart it foure miles." Once he was building the trough in a cider-mill for Mr. Smith, who had saved for the purpose some particularly nice plank, which he did not like to waste by cutting them off at the proper length. His sons remonstrated against having the trough so long. But he appealed to uncle Mosey, if it could not be made the full length of the plank. "Ay," was the reply; and the father looked with a sort of triumph towards the boys — "ay, but the mare maun aye jump the trough." It was he

who thus described his neighbor Deacon Duncan's skill in hewing. "As I was ganging," said he, "through the woods, I heard a desprite crackling, and there I found a stick of timber that Deacon Duncan had hewn, sae crooked that it could nae lie still, but was thrashing aboot amang the trees. I tauld him he maun gang and chain it doon, or it wad girdle the hale forest." "Deacon Moore," he said, "made a ladder, and it was sae twisting, that before he got half way to the top, he found himself on the under side, looking up." These stories would be too trifling to tell in a serious biography, were it not for their influence on the young. No one can understand, in some of its most important particulars, the character of Jeremiah Smith, without becoming acquainted with the peculiar wit and pleasantry of the race to which he belonged.

They were a serious and devout people. Nowhere, among the first settlers of New England, every part of which was sought for a religious purpose,[1] were the ordinances of religion more solemnly regarded, or its truths more reverently received. And yet there was a love of merriment and wit mingling strangely with the most serious concerns. Judge Smith used to say, that they went to meeting on Sunday, practised all that was good in the sermon through the week, and laughed at all that was ridiculous. They were a Scotch race, who had been for two or three generations in Ireland, and they bore the marks of their double origin. There was a

[1] It has been said of the settlers at Strawberry Bank, (Portsmouth,) that they professed to have come not to serve God, but to catch fish.

grotesque humor, and yet a seriousness and pathos, about them, which in its way has never been excelled. It was the sternness of the Scotch covenanter, softened by a century's residence abroad amid persecution and trial, wedded there to the pathos and comic humor of the Irish, and then grown wild in the woods among our New England mountains.

An uncle of Jeremiah Smith's, who had been an intemperate man, was found dead on the road, and an inquest was held, to decide upon the cause and manner of his death. All the relations were assembled, and, of course, in the most solemn state of feeling. But the coroner made some ridiculous blunders in reading; the young could hardly keep their countenances, and soon a sense of the ludicrous had so prevailed, that the whole assembly, even the sisters of the unfortunate man, were overcome by it.

Among Judge Smith's early recollections was the funeral of his grandmother, which took place at his father's, when he was ten years old. It was the custom, borrowed, I suppose, from the Irish wakes, for the friends and neighbors to sit up all night with the dead, reading appropriate passages from the Scriptures, engaging, part of the time, in prayer, and telling stories of witches, and demons, and ghostly apparitions, and of the death-warnings which had been so often given. But the night was not all taken up with these things; there was eating and drinking, and shouts often of laughter, before the morning. So wild a mingling of revelry and grief and superstitious terrors, connected as they were with the uninhabited state of the country, made an

impression on the boy which followed him through life.

Whatever his reason might have taught, I do not think that he, any more than Sir Walter Scott, ever freed himself entirely from a sort of vague feeling, in respect to supernatural influences. He used to refer to stories connected with a particular place, that was thought to be haunted, where horses were often stopped, without apparent cause, and oxen could not draw even a light load without great effort. One illusion, of a similar kind, occurred in his own experience, which I do not think he was ever able to throw entirely off as only an illusion, however his judgment may have been convinced that it was so. As he was walking, when quite young, through a large open field, he perceived a man approaching him from behind. He slackened his pace, and, looking back again, saw him, as he thought, still nearer. A minute after, when he supposed that he must have overtaken him, he turned round to speak to him, but there was no man there. It is hardly worth the while to say, that he was probably lost in his own thoughts, and, some impression being made on his eyes, he, without examining, took it to be a man, and, still intent on what was occupying his mind, carried on the illusion, till, when turning to speak, he came to himself, and the vision was gone. He was, of course, startled, and, in his childish imagination, coupling it with the stories he had heard of supernatural apparitions, it is not wonderful that he should have been strongly impressed by it. For if any circumstances could tend to fix such things in

the mind, it was precisely those under which he was placed; — among a people who, without exception, most religiously believed in them; amid a wilderness yet unexplored, except by the Indians and a few daring adventurers; in the midst of what were then savage mountains; left much of the time alone with the mysteries of nature, on which, to his mind, none of the light of modern science had yet been thrown. It is curious, and not without a philosophical interest, to trace to its source, and then follow out through the subsequent history of a strong and cultivated mind, the effect of such impressions.

Another thing, which had no small influence on the character of the boy, was the account given by his relatives of the state of things in Ireland, and particularly of the wars in which they had been engaged. Many and terrible stories connected with the great massacre of Irish Protestants by their Popish neighbors had been handed down from father to son, losing nothing of their circumstantial horrors in the descent. He never forgot the impressive manner in which his grandfather, John Morison,[1] recounted the dreadful

[1] John Morison, the son of Samuel Morison, had come from Ireland with his father and family in August, 1718. They arrived late in the autumn at Casco Bay, where they were frozen in for the winter. It is said that on first landing upon that cold and cheerless coast, the wintry ocean behind them, and naked forests before, after a solemn act of prayer, they united in singing that most touching of all songs: — "By the rivers of Babylon, there we sat down, yea, we wept, when we remembered Zion;" and with peculiar feelings, as they surveyed the waste around them, and remembered the pleasant homes which they had left, might they add, "How shall we sing the Lord's song in a strange land?" They left Casco Bay early in the spring, and began their settlement in Londonderry, April 11th, O. S. 1719. From his wife, Margaret Wallace, who is supposed to have been of the race of Sir Wil-

sufferings which he, then a boy, endured at the siege of Londonderry. He used to tell of watching for hours at a mouse-hole, in the hope of catching a mouse for food; and he most eloquently described the intense anxiety they felt in the city, when, after nearly two-thirds of their number had died of hunger, they saw a frigate coming to their relief; the sinking of the heart, when twice she had vainly tried to break the boom, which had been thrown across the river; and then the violent change from despair to the frenzied bewilderment of joy, when, at the third attempt, she finally succeeded, and came up bringing food to the starving inhabitants. This same old man had been also at the battle of the Boyne, July 1, 1690, and saw the Count Schomberg when he fell. It is difficult for those born in cities to understand the intense interest excited among children in the country, and especially at that period, by incidents like these, related by one who had been personally engaged in them more than three quarters of a century before.

It was a rude state of society in which the boy's lot was cast, and though all his brothers, except one who died early, were afterwards distinguished for their intellectual powers, there was not, if we may trust one who knew them fourscore years ago, a

liam Wallace, all the wit and smartness of the family were thought to have been inherited. It is related of her that when her husband was building his first habitation in Londonderry, she came to him and in a manner unusually affectionate, said, "Aweel, aweel, dear Joan, an it maun be a log house, do make it a log heegher nor the lave," (higher than the rest.) On her death-bed, being asked what she would have, she replied, "Nothing but Christ." These were her last words.

more uncouth, impudent, hungry-looking set of lads in the town of Peterborough. Jeremiah was indeed a diffident boy. The rest were great workers, and put to work almost as soon as they could walk. They were ready for all kinds of rough, practical jokes, and it was not an easy thing to provide food for seven such boys. To this day, in their native town, it is told as a cause of their being afterwards so sharp-witted, that on returning one night from some frolic, they in the dark seized upon and devoured what they thought a dry cod-fish; but the next day their mother, wishing to make a cheese, was in great distress because she could nowhere find her rennet.

Under circumstances apparently so unfavorable, there was, in Jeremiah's mind from his earliest years, an intense desire for knowledge. "I well remember," he said seventy years afterwards, "my longings at that time." He taught himself to write a good hand, partly by imitating his father's hand on pieces of birch-bark, with ink made from vegetables. When quite a boy, he was employed by people to write letters for them, not excepting love-letters, for which, he said, he had no other model than the Songs of Solomon. Peterborough, for some time after its settlement, had no enclosed pastures, and the little Jeremiah was employed in herding the cattle. He used to recur to the pleasure he enjoyed at such times in building stone houses. In these solitudes were probably begun the habits of thought and meditation, which he always retained. No man could be more fond of society than he was in after life, but he loved also to be alone, and not a great while before his

death, he said, "I conscientiously think I have enjoyed more in a lonely ride than in the company I loved the most." These circumstances, unpropitious as they might seem, were really favorable to his intellectual development. "Your education of events," he said to a friend, "has been the best part of your education. I think little of what teachers can do." He drew this opinion undoubtedly from his own early experience.

He would walk sometimes four or five miles to a place where he had heard there was a book, and reading it upon the road, he often devoured its contents before reaching home. When a little boy, he fell in with the Arabian Nights, which he read with delight. But the Bible was the book, which, above all others, interested and instructed him from his earliest days, and for which, not less on account of its literary merits than as the great repository of divine truth, his admiration never abated. He read it again and again, and committed large portions of it to memory. The Old Testament especially was a never-failing resource. His knowledge of the scriptures was indeed, as he thought, the cause of his being selected for a public education. His father was one of the deacons of the church, and his house a place of resort for the neighboring ministers. Sometimes, after the chapter had been read, at family prayers, the father would say, "This little boy can repeat that chapter." Whereupon Jerry was called up and would recite; "For Zion's sake will I not hold my peace, and for Jerusalem's sake I will not rest, until the righteousness thereof go forth as brightness, and

the salvation thereof as a lamp that burneth." After the boy had repeated this or whatever chapter it might be, the minister would pat him on the head and say, "This boy, 'squire, must be a minister. You must bring him up to college." Thus by degrees it came to be understood in the family that he was to go to college; an advantage he thought he owed to his ready memory.[1]

He began to study Latin, when about twelve years old, with Rudolphus Greene, an Irishman employed by the town to keep school a quarter of the year in each of the four quarters of the town. While he was hearing a boy recite he usually held a stick in his hand, on which he cut a notch for every mistake, and, after the recitation was ended, another stick was employed to give a blow for every notch that had been cut. Jeremiah, who seldom had a notch against him, followed him round in his circuit, and is described as a bashful, awkward boy, who might be seen on his way to and from school, with an open book in his hand, and taking no notice of anything else. According to his own account, the instructions he received in Latin were wretched enough. When, longing to be enlightened on some dark passage in his lesson, he went to his teacher with his heart as full as if the whole world depended upon it, he often came away with tears of disappointment from the

[1] Judge Smith always disclaimed being a man of genius. His memory, which was indeed wonderfully quick, retentive and exact, he thought his most remarkable endowment next to his love of labor. If Quinctilian's remark, "quantum memoriæ, tantum ingenii," were true (which it is not) he might certainly claim to be a genius of a very high order.

blundering explanations that were given. At the meeting-house, where the school was kept a part of the time, the only seats and desks they had were made of rough boards placed on blocks of wood. If such was the meeting-house, what must have been the common school houses? Bad as the school was, his attendance was often interrupted by the labors that were required upon the farm, and his studies must have been entirely suspended more than three quarters of the time after he commenced Latin till he entered college. He used to boast that when twelve years old he could reap as much in a day as a man.

Through the town, however, he was singled out as one who was yet to be distinguished. Late in life he once said of a boy, "I don't like to see him bear punishment so well; it seems so naturally fitted for *him*, and he for *it*." It was by the converse of this reasoning, that old Mrs. Cunningham, who lived near his father's, formed her opinion of him. "I knew," she used to boast, after the prophecy had been fulfilled, "that Jeremy Smith would make a great man, always after I foond him on my ploomb tree, stealing ploombs — he lukked sae shamed." A quick ingenuousness of shame in a boy has been, from the time of Quinctilian, no mean sign of distinction; but in the present case, an uncontrollable desire for knowledge, and a readiness to pay, in laborious days and nights, whatever price might be required, afforded a surer presage of future greatness.

He lived among men who made great account of theological discussions, and who, with rough, strong sense, and an extensive knowledge of scripture texts,

delighted to enter on such disputes. While working with his elders, he was sometimes persuaded so far to overcome his diffidence, as to "let off a speech." Once, after a regular forensic disputation between him and a colored man, who was owned as a slave by his uncle, Deacon Moore, the audience decided, that, though Baker made the most noise, Jerry showed the most sense and the soundest doctrine.

Matters went on thus for several years, when he was sent for a short time to New Boston, to be under the instruction of an Irishman, named Donovan. After this he went to Hollis, where, under the Rev. Mr. Emerson, he began Greek and finished his preparation for college. This was a golden period, and he always remembered his kind and intelligent teacher with affectionate respect. He remembered only one thing against Mr. Emerson. Soon after going to Hollis, the evening before Fast Day, one of his fellow-students said to him at tea-time, "You had better lay in a good stock, for you will get nothing to eat to-morrow." This information sounded so strangely, that he did not heed the warning, and, in fact, did not believe it. But in the morning there were no signs of breakfast. He went to meeting, came home very hungry, and perhaps a little angry; but how must his irritation have been increased, when, through the half-open door of the best room, he saw his reverend teacher devouring drop-cakes and custards! It was in Hollis that he first became acquainted with Noah Worcester, the apostle of peace, who was not more remarkable for the clearness of his mind and his simplicity and purity of character, than

for the struggles through which he passed in early life, under circumstances which seemed the most adverse to gaining an accomplished education.

It was about this time that Jeremiah first undertook the office of a teacher in a remote corner of his native town. The fashion was for the master to board round from house to house, with the parents of the children. Once, he used to say, while he was sitting at table, a hand from behind pounced upon his plate, and carried off all its contents. It was the hand of one of the hungry children, and the father of the family laughed heartily, as if what had been done showed that he might be a promising boy.[1]

In 1777, Jeremiah Smith was entered at Harvard College, and about the same time enlisted for two months in the army. News had just come of Burgoyne's invasion. One afternoon, a young man,[2] apparently about sixteen, called on Capt. Stephen Parker, of New Ipswich, and offered to enlist. The captain inquired who he was, and if his father had given

[1] One of the most distinguished merchants in Boston, Samuel Appleton, Esq., was, a few years later, engaged as a teacher in the same neighborhood, though in an adjoining town. He, however, instead of going round with the scholars, was let out at auction, as paupers used to be, to board with the lowest bidder. He did not much like the place where he was to go, and a kind woman, a Mrs. Perry, who recently died at the age of ninety-two, had compassion on him; and, for the four-and-six-pence or five shillings a week, which her neighbor had thought a reasonable compensation, took him into her family.

[2] This account was kindly furnished me by the Hon. Salma Hale, of Keene, N. H., who had it from Capt. Parker's son, and who, on examining public documents at Concord, found the name of Jeremiah Smith on the roll of Capt. P.'s company. Mr. Hale's name is a sufficient guaranty for the accuracy of the account, as far as he had anything to do with it.

his consent. The lad replied that his name was Jeremiah Smith; that his father lived in Peterborough, and that he had come without his knowledge. Capt. Parker knew his father, and, persuading him to remain at his house till morning, he went in the night to Peterborough to consult the father, who at length consented that his son should be enlisted. He exacted, however, from the captain a promise, that should his company be ordered into battle, he would not take Jeremiah with him, but despatch him on some duty that would be safe. Just before the battle of Bennington, Capt. Parker ordered the lad on some particular duty that appeared to be without danger, but in the midst of the fight saw him by his side. "Why did you come here?" he said. "Oh, sir," he replied, "I thought it my duty to follow my captain." In the battle a musket-ball grazed his throat, leaving a mark which remained for years, and his gun by another bullet was rendered useless. He threw it away, and, seizing another that lay near a dying soldier, who had fallen by his side, he, in the language of his captain, "fought with it like a young hero," till the battle ended. In his own account of the matter he claimed no credit for heroism, and said that musket-balls made a sort of music which he had no disposition to hear a second time. He passed the night after the battle in assisting to guard the Hessian prisoners, who were confined in the Bennington meeting-house.

At Cambridge he was in the class with the Hon. John Davis, late judge of the United States' district court, who remembers him as a good scholar and

pleasant associate. It is a little remarkable, that, besides Samuel Dexter, who, as an advocate, was inferior to no man of his day, there should have been in the same class three men, John Davis, Elijah Paine, and Jeremiah Smith, who were all placed upon the bench by the elder Adams. After remaining at Harvard College two years, Mr. Smith was entered at Queen's (now Rutgers) College, in New Jersey. His reason for making the change was, that he got nothing at Cambridge, the college being then in a depressed condition, and the instruction poor.[1] He probably gained nothing by the change, except to cut short his course, and he was graduated in 1780, a year sooner than he could have been at Cambridge. While in New Jersey he was in some danger of ruining his eyes, by rising through the winter at four o'clock to study Greek. Referring, fifty years afterwards, to the state of the colleges at the time he took his degree, he said, "I can remember when they were less attentive to the useful branches of knowledge than now. You might formerly *sometimes* see a graduate who could not write a page of good English, nor spell well *such* English as he *did* write."

After leaving college he remained a year or two in Peterborough. In the autumn of 1781 he went with cattle for the army to Peekskill, N. Y., and there, for the first time, met Alexander Hamilton. At a public house he found a number of officers, and, among them, a young man, who was listened to with marked

[1] Perhaps the religious views at the New Jersey College had some influence.

attention by men evidently his superiors in rank, a greatly so in years. Hamilton was then but twen three or twenty-four, a circumstance which may w excite our wonder, when we consider how much had already accomplished, and how great even th was his influence with Washington and the able men of the nation. The feelings which this inte view awakened in Mr. Smith were never change and to the close of his life, after a pretty intimate a quaintance with most of the great men of Americ who were on the stage with him, he always consi ered Hamilton as a man of greater original powe and of a more magnanimous nature, than any oth whom he had known.

I have endeavored to trace back as minutely as could Mr. Smith's history to its early and humb beginnings. It is much easier to show, in gener terms, the bow of promise which a great man's se ting sun throws over the obscurity of his youth, an it may answer the purposes of eulogy, but not of faithful biography. The little, and in themselve unimportant circumstances, which exhibit peculia traits of mind, or which go to form the future cha acter, are the most instructive parts of a man's his tory.

It was during the two years Mr. Smith spent i Peterborough, that he received from his native tow the first public mark of the confidence and respect which through all his political fortunes, continue unshaken, even with those whose opinions were ad verse to his. One who had known him intimatel from the time when he was taken out of the well t

the last summer of his life, and who had been early and intimately associated with him in the business of the town, speaks in the strongest terms of his important services to the town. They differed entirely in their religious views, but when some doubts were expressed as to Mr. Smith's Christian character, he said with a strong emphasis, "I did think him the best-tempered man I ever knew. I can say, with a clear conscience, that I placed more confidence in Jerry Smith than in any [other] man that I ever knew in the world; for there was no guile in him, but all fair integrity." And however they may at times have been estranged by party conflicts, those who knew him best from his childhood up, would, I believe, unanimously testify, as strongly as this man, to his good temper and the purity of his character. These high qualities were recognized in him from the beginning. The fact that his own family, who are usually the best and often the severest judges of character, together with all the neighbors, had set him apart, from his childhood, for the ministry, shows well enough the estimate which they put upon him. The love of knowledge, a high sense of justice and honor, and the desire to do well whatever he undertook, whether on a large or a small scale, and a more than willingness to endure any amount of labor, were then, as always, the distinguishing qualities of his mind. And not more true is it, that the noblest rivers come down from the loftiest mountains, than that the most useful lives are always, though we may not see the source, those which flow from the highest aspirations and desires in youth.

At a town meeting in Peterborough, January 2 1782, a committee of five was appointed to examin the plan of government which had been proposed fc the state of New Hampshire, and at the same mee ing he was chosen to attend the convention in Cor cord, as a member from Peterborough. I can fin in the office of the secretary of state, at Concord, n records of this convention; and do not suppose tha the young legislator took any active part in this hi first public employment.

Having remained nearly two years undecided wha profession to take, he at length resolved to study law and in August, 1782, he began the study with Shear jashub Bourne, in Barnstable, Massachusetts, bein at the same time a private teacher in the family c Brigadier Otis. His predecessor in both these place was his old classmate, John Davis, whose subsequen fortune, in the usefulness of his judicial services an the honored serenity of his old age, was not unlike hi own.[1] After remaining a year at Barnstable, he spen the next year in Andover Academy, as assistant in structor to "that able and excellent scholar," (as h

[1] When Mr. Davis left the office of comptroller of the United State treasury, his place was offered to Mr. Smith. Mr. Davis was appointe United States district attorney, for Massachusetts, in 1796, Mr. Smitl for New Hampshire, in 1797, and they were both made judges, one o the district, the other of the circuit court of the United States, I believe in the same year. The Hon. Prentiss Mellen, late chief justice for th state of Maine, and the Hon. Jeremiah Smith, late chief justice of New Hampshire, both read law in Barnstable, and the Hon. Lemuel Shaw now chief justice of the supreme court of Massachusetts, was born there. Judge George Thacher, Col. James Otis, also a judge, and Judge Davis, father of the solicitor-general, Daniel Davis, were Barnstable men, and Judge Marcus Morton was descended from Cape Cod ances tors.

called him,) Dr. Pierson. Here it was his privilege to number among his pupils, two presidents of Harvard University, and the late honored principal of Phillips Exeter Academy;[1] and he always boasted with an honest satisfaction, of the relation which they had once sustained to him. When, after Dr. Abbot had been fifty years connected with the Exeter Academy, his grateful pupils, with Mr. Webster at their head, held a sort of festival in honor of their teacher, Judge Smith claimed for himself a distinction, "which," he said, "could belong to no other man living. You were his scholars; I his teacher. It was little that I had to impart; but that little was most cheerfully given. I well remember the promise he then gave; and providence has been kind in placing him just in that position where his life could be most usefully and most honorably spent."

In 1784, he took the charge of a small school of young ladies in Salem, at the same time reading law under the direction of William Pynchon. This he looked back upon as one of the happiest portions of his life. At Salem, he was brought into a larger circle of refined and educated people than he had before met; and he is still remembered, by some who knew him there, as an amiable, agreeable, intelligent young man, and a great favorite in society. He entered earnestly into plans for the improvement of his pupils, and, much as he admired and always professed to admire personal beauty, he endeavored earnestly

[1] John Thornton Kirkland, Josiah Quincy and Benjamin Abbot. "I sometimes," he said, "feel almost giddy when I think of the great men who have been under my charge."

to impress them with a sense of the superior value
that higher and more lasting beauty, which belongs
the mind and character. He was greatly please
with the turn which a young lady gave to som
complimentary remarks that he was making to he
and wished that all ladies would make as good
use of flattery. "I know," she replied, "that I d
not possess those qualities; but since you ascrib
them to me, I take it for granted that you wish m
to have them, and will therefore try to make you
words true." Of that period he might have said, a
Lord Eldon said of the corresponding period in hi
life: "Oh, those were happy times, we were alway
in love then."

He became particularly interested, while at Salem
in a young lady of great beauty and loveliness, wit
whom he corresponded for several years. The le
ters still remain, and though written after the fashio
of the day, bear marks of a deep and tender attach
ment on both sides. But his circumstances were nc
such as to warrant an engagement or to commen
him to her friends, and she was reserved for a mor
splendid fortune but an early grave.

Mr. Smith was remarkably communicative, an
used always to say that he had no secrets of his own
but an incident, which occurred while he was in Sa
lem, taught him to be careful about telling other pec
ple's secrets, even to his nearest friend. He was t
go on important business down into Maine to secur
a debt. The evening before he set out he happene
to mention it to an intimate friend and fellow stu
dent. The next morning he found that the hors

which he had counted upon having, was gone, and immediately suspected that he was anticipated by his friend, who, being left in charge of his father's business, had sent off a messenger at midnight to secure a debt which was due to him. Mr. Smith took the best horse he could get, and found, by inquiries upon the road, that he was gaining on his competitor. Before evening his horse gave out; but another was procured. It was a chilly night as he rode through the Wells woods in his nankin small clothes and thread stockings, but he pressed on, and at last stopped at a public house where the other messenger was asleep. He procured some refreshments for himself and horse, and, wishing his competitor a sound night's sleep, rode on and accomplished his object. The first man he met on his return was his friend, who immediately called out to him; "Well, Smith, I know all about it. You've beat, and I am glad of it; for you ought to beat." His friend was the Hon. Benjamin Pickman, a man who carried with him through life the nicest sense of honor, and between whom and himself this little matter did not cause a moment of estrangement or ill-feeling. As long as they lived they cherished towards each other sentiments of affectionate respect, and when, after more than forty years, heavy domestic calamities had fallen upon them both, they met, as from two opposite poles in temperament, but with warm mutual sympathy and kindness.

CHAPTER II.

1786 — 1790.

AT THE BAR — INFLUENCE IN THE TOWN OF PETERBOROUGH — IN THE NEW HAMPSHIRE LEGISLATURE.

Mr. Smith was admitted to the bar by the court of common pleas holden at Amherst, Hillsborough county, N. H., in the spring of 1786, and under circumstances that cost him a good deal of anxiety. His course of study, as we have seen, had been much interrupted by other occupations, and, though he produced ample evidence of his legal qualifications, it was not easy to show precisely how much time he had spent in acquiring them. There was a strong feeling among the lawyers against his admission. The court was to adjourn on Saturday, and he could not succeed in getting a meeting of the bar called till Friday morning, when, after considering his application, they rejected it, on the ground of its not being accompanied by the proper certificates. He immediately set out on horseback for Salem, and, having rode all night, arrived at Amherst the next morning with the required recommendation from Mr. Pynchon,

which he offered to the president of the bar,[1] with a request that another meeting might be called. This was refused on the ground of want of time; when Mr. Smith rose and appealed to the court, who were so convinced of the envious injustice with which he had been treated, that, waiving the usual forms, they at once unanimously admitted him. The bar were exceedingly angry, and spent the remainder of the forenoon in the most taunting remarks and insinuations. One moved that Jo Blanchard should be admitted to the bar; another proposed Judge Shepherd, a man who turned tory during the war and joined the British; and other members of the bar, in insulting tones, proposed others who were either notoriously ignorant or notoriously wicked. The court paid no attention to them, and they could only comfort themselves by asserting, that it was of no consequence, as he certainly would not be admitted to the superior court. But the young man whom they so despised for his want of legal knowledge, almost immediately took his place at the head of the bar. At the next session he appeared with a full docket, and was em-

[1] Joshua Atherton. The Hon. Charles H. Atherton, formerly representative in congress, and a distinguished member of the New Hampshire bar, was his son. Joshua Atherton was, in 1788, a member of the convention for ratifying the constitution of the United States; and the only relic, it is said, that has been preserved of the debates in the convention, is a speech of his against the constitution, because *it sanctioned* slavery and the slave trade. He was the grandfather of the Hon. Charles G. Atherton, who, as a representative in congress, was the first to propose a resolution, by which all petitions relating to slavery should be rejected without a hearing, and who, in the United States senate, has given his vote for the annexation of Texas; and, of course, for the indefinite perpetuity and extension of slavery.

ployed to argue their causes by some of the very men who had most violently opposed his admission.[1]

What his feelings were, may be seen in the following extracts from a letter written to William Plummer, in October, 1787. "I hate a monopolizing spirit; and though the profession seems somewhat crowded at present, the harvest small, and the laborers very many, yet I cannot help thinking that there is room for as many good characters as may be disposed to enter into the profession." Then, after mentioning his application to the bar, he says — "I had the mortification to hear for answer, that their wisdoms were not fully satisfied, and that they had continued it for further consideration. This new mortification I had to bear, as if the humiliating circumstance of barely asking for admission into such a brotherhood were not enough in all conscience. 'T is devilish provoking to be denied admittance into *bad* company. I knew I was not so well qualified as I ought, and would have been glad, to have been; but my age and circumstances (especially when I adverted to the character and pretensions of those already admitted,) determined me to waive all ceremony, and apply directly to the court, which I did at the adjournment, and was admitted by their unanimous voice. This bold stroke gave great umbrage, you have undoubtedly heard. I do'nt know that I was right; I was governed by the

[1] This account I took down from the lips of the venerable Timothy Farrar, the judge who then presided in the court of common pleas, and who, at the age of ninety-six, retained a distinct remembrance of all the particulars of the transaction. There is, it will be seen, a slight difference between this statement and that which follows.

impulse of the moment, and he whose feelings harmonize with mine will not condemn me."

Mr. Smith was now in a field which gave full employment to his powers. The condition of the country at that time, the crude and unsettled state of society, and the not less crude and unsettled state of the law, tended greatly to multiply the causes of litigation. As an attorney, he, from the beginning, exercised his influence in discouraging the foolish, angry, and wasteful suits which then formed so large a part of the business of the profession. Sometimes with pleasantry, sometimes with earnest remonstrance and serious arguments, he turned away those who were intent on ruining themselves; and it was thought by many of the most considerate men, that the town of Peterborough might well afford to pay him five or six hundred dollars a year, for what he saved to the inhabitants by preventing lawsuits. As an instance, a man came to him greatly irritated against his brother for his unjust and oppressive conduct. "And can you prove all this?" was the question, after the injured man had worked up his feelings by recounting his wrongs. "Certainly, I can." "Do you like David's Psalms?" "Why, yes," said the man, somewhat amazed. "So do I," said the lawyer; "I think there is a great deal of good reading in them. One in particular I have read a great many times, and think it excellent. I can't remember exactly which it is; but it is somewhere near the hundred and thirtieth, and you may easily find it when you go home. It begins with these words, 'Behold, how good and

how pleasant it is for brethren to dwell together in unity!'"

The practice of that day in New Hampshire was not of the kind best fitted to make a profound lawyer. The judges were not always men who belonged to the profession; and even the chief justice of the superior court, at a much later day, in his charges to the jury, was accustomed to say, "Gentlemen, the merits of the case are the law of the case, and of both you are to judge." Of course, the object of the counsel was rather to get the good-will of the jury, than to argue cases on the broad principles of law; and legal decisions were made to depend less on law than on feeling, that most uncertain and often unjust of guides. It is usually at such times, when it is the fashion to establish equity in the place of law, that great legal principles are made subservient to vague ideas of justice, and the inferior arts and quibbles of the profession are most in the ascendant. At all events, this was the state of things in New Hampshire, when Mr. Smith came to the bar; and during the four-and-thirty years that followed, comprehending the whole of his active life, the one public object, to which, above all others, he devoted his time, his strength, the earlier essays and the riper fruits of his vigorous and disciplined mind, was to bring about a better administration of justice. As a practitioner, he strove to introduce a better practice; and in this he was powerfully aided by a few, who soon after followed him into the profession, bringing with them an amount of professional zeal and indus-

try, an acuteness of discrimination, and a massive intellectual power, through which some of them have risen to a rank not inferior to that of any lawyers in the United States.

It is, however, from the nature of the case, impossible to point out the particular improvements that were introduced, or where effects are known, to refer them always to their true cause. The great, and usually the most important influence of a leading practitioner at the bar, and to an almost equal extent, of a judge upon the bench, is the silent influence of mind and character. The artifices of the profession, the paltry shifts of legal cunning, and the subterfuges of ignorance insensibly lose their respectability, and are shamed out of countenance by the piercing look of one who sees through them at a glance, and who, it is known, will expose them to laughter and contempt. It is equally difficult to measure the influence of such an example upon the young in awakening their ambition and directing their studies. Yet, though we cannot trace it step by step, it is easy to see how in these two ways alone, an entire revolution may be brought about by one or two powerful minds in the whole administration of justice throughout a state. Such a change undoubtedly did take place in the courts of New Hampshire, and I believe that all intelligent men, who have looked into the subject, will unite in attributing it to Mr. Smith, more than to any other single man.

The whole country, after the war, and especially the legal profession, was infested by a set of idle and

worthless fellows, who lived by practices which are now hardly known in New England, vitiating the characters, and preying upon the time of the young. Mr. Smith was at this early period, thrown much into their society, but he had no part nor fellowship with them. He did not set himself up as an example, nor treat them with harshness, but never frequenting their places of meeting, he contrived, by various expedients, to shake them off, when, in their visits to him, they were consuming the time which he wished to employ in his studies.

All professional men, in country towns, are subject more or less to one annoyance — the disposition of clients to prolong their visits, after their business is finished. This affliction fell particularly heavy on Mr. Smith, owing to his easy and friendly manners, and the charms which his conversation had for persons of all classes. The good people of Peterborough and the neighboring towns, while sitting in his office before a cheerful fire, and listening to his conversation, full of wit and instruction, often lost all proper regard both for his time and their own. He was, therefore, driven to contrivances to shorten their long visits. One was, when he saw a regular sitter ride up, to order his horse to be saddled, or to take the bridle and go himself towards the pasture. This would sometimes, he used to say, shorten the visit; but sometimes his friend would be so exceedingly kind as to assist him in getting his horse, and then would propose to ride with him.

Through life Mr. Smith was one of the most in-

dustrious of men, and always took great satisfaction in thinking that, whatever might have been his success, he had spared no time or labor, but had done all that he could. He was, to use an old English word, a most *painful* practitioner, and never willing to bring a cause into court without thorough preparation. He had not the unmanly fears through which great talents sometimes wear themselves out in those minute and fruitless investigations, which embarrass and perplex the mind rather than give it strength. No man could act with greater boldness, but his boldness arose from the consciousness of having gained the mastery of his subject, and was not the reckless and ruinous self-confidence, through which so many promising young men foolishly consider themselves exempted from the necessity of exertion, and therefore dwindle into insignificance.

The amount of Mr. Smith's practice at the bar during the ten years that he kept his office in Peterborough, though probably equal to that of any other lawyer then in the county, must have been small compared with what it was some years afterwards. He very soon engaged in public life. In 1786 he was chosen town clerk. In 1787 he was appointed surveyor of highways, for the district in which he lived. It had previously been the custom to allow the same price to all the men that worked upon the roads, and the consequence was that in some families the highway taxes were worked out mostly by the old. But Mr. Smith determined to allow them but half price, and fixed on that rate for his father and Major Wilson, another aged man of great consequence in the town. This

produced a high opinion of his independence and justice, and as he himself worked upon the roads with his neighbors, he acquired such a reputation that on the following spring he was chosen representative to the general court.

In another capacity he performed a much more important service for his native place. There were two or three of his townsmen, who, without having studied the profession, entertained a very high opinion of their legal attainments, and had contrived to impress it on others. As is usual with such persons, they had a great disposition to put their knowledge in practice. Like some young surgeons, who begin by trying the lancet upon their own muscles, they began by law suits of their own, and then, having induced the town to engage in a foolish and unjust suit, they were, in 1782, appointed a committee to carry it on, and soon after were appointed a standing committee, with full powers to carry on all suits for and against the town. As a consequence, the town was engaged in long and vexatious suits, without either law or justice on their side. The object of the committee seems to have been to resist just claims, and then worry out their adversaries by delays, which usually involved the town in costs greatly beyond the original demand against it. The more respectable of the inhabitants were violently opposed to such a course on the ground both of principle and expediency; but such was the general confidence in the legal ability of their agents, that year after year they were continued in office. At length, in April, 1787, Jeremiah Smith was chosen in their place. There was, how-

ever, a violent opposition; the whole town was in commotion, and on the 22d of June, it was voted to dismiss him to make room for the old committee. But at a town meeting on the 9th of July, this vote was reversed, and Mr. Smith was again appointed agent. Thus, in the course of the year, seven town meetings were holden on this subject with various success, till at last the old committee were permanently displaced; and through the judicious management of the new agent, the town was freed from its costly and harassing experiments in the law.

During the three or four years that followed, all the public business of the town came, in a great degree, under his supervision, and was placed on a new and greatly improved basis. For several years he was one of the selectmen, and according to the testimony of one who served with him, "performed all the labors of the office himself, till he had taught them a better way," when he declined being any longer a candidate. He made great efforts for the improvement of the public schools, and through his influence five new school-houses were built in 1791. He succeeded, too, in procuring for the town better teachers than they had before had, and an impulse was given to the cause of education, which has been felt in the character of the inhabitants ever since. A small social library was got up; good books thus brought within the reach of the young, were read with eagerness and care; important subjects in theology, metaphysics and politics, were made the common topics of conversation among young men, and were discussed with correctness of language, with

energy and ability. In this way, a race of strong-minded, well-informed and thinking men grew up. There was a beech tree near the meeting-house, where they used to assemble before and after the service on Sunday. I use here the strong language of one,[1] who remembers well the discussions he described, and who, in his own striking eloquence, unites many of the finest qualities of the Peterborough character. "Religion, politics, literature, agriculture and various other important subjects were there discussed. Well, distinctly well do I remember, those debates. No absurd proposition or ridiculous idea escaped exposure for a single moment. A debater then had to draw himself up close, be nice in his logic and correct in his language, to command respectful attention. Strong thought and brilliant conceptions broke forth in clear and select language. They were reading men, thinking men, forcible-talking men, and sensible men. Bright intellectual sparks were constantly emanating from those great native minds; and falling upon younger minds, kindled up their slumbering energies to subsequent noble exertion. The immediate effect of those discussions could be easily traced in the beaming eye and the agitated muscles of the excited listeners. It was obvious to an acute observer, that there was a powerful effort going on, in many a young mind among the hearers, to seize, retain and examine some of the grand ideas that had been started by the talkers. This rousing of the young

[1] General James Wilson, in his speech at the Peterborough Centennial, October 24, 1839.

mind to manly exertion, and aiding it in arriving at a consciousness of its own powers, was of great advantage where the seeds of true genius had been planted by the hand of nature."

We must allow something for the enthusiasm of one speaking on such an occasion, of the citizens of his native town; but there were among those who grew up with Jeremiah Smith, and who came upon the stage while he resided in Peterborough, men who would have been distinguished in any place for their intellectual endowments. His brother John,[1] was considered, by those who knew them both, as his superior in native strength. James Wilson was a man of strong sense and of a quick, impassioned elo-

[1] He was for many years, an able and influential member of the New Hampshire legislature. Notwithstanding his plainness of speech and the pungency of his wit, he was a man greatly honored and beloved, and his sudden and violent death, in August, 1821, caused a deep sensation of grief through the whole community in which he lived. The present governor of New Hampshire, John H. Steele, who always differed from him in politics, has, with a warmth of feeling alike creditable to both, thus described him. "If Peterborough can boast of a better, more useful, brighter, purer-hearted son than was John Smith, I know him not. That she can point to many, whose exterior, both in dress and address, comes much nearer to what is termed a finished gentleman, no one will doubt. But where now is the man, who never lets a human being pass him unheeded; whose ever-active mind and ready talent can draw forth alike the budding powers of childhood, or those of ripened age; who is ever ready to aid, counsel or direct, with wisdom, purse or hand, his fellow man? Such a man was John Smith. With an address, which to a stranger appeared rough and rugged as the mountains which surround his native town, he possessed a heart as tender and pure as ever animated the breast of man. To him I owe more than I can express. He was not only a friend but a father. He taught me to believe that there is nothing impossible; nothing that a willing mind and active hand cannot accomplish. I yet seem to hear his voice reproving me for saying, *I cannot do it!* 'Why don't you try,' he would say, 'and not stand there looking as if you were in a trance?'"

quence. And there were others fully able to maintain their side of the argument against them.

During three years, 1788, 1789, and 1790, Mr. Smith represented the town in the general court, and took there the same high place which he had already taken at the bar. In 1789 and 1790 he was chairman of the committee appointed "to select, revise, and arrange all the laws and public resolves then in force, whether passed before or since the Revolution." The labor devolved almost entirely on him, and took up all the time he could spare for two or three years. The work he accomplished is not easily estimated, but must have been of great and important service to the state. As an evidence of the stand he took in the legislature, it may be mentioned that the house, having voted (June 17, 1790) to impeach the Hon. Wodbury Langdon, one of the justices of the superior court, appointed Mr. Smith to conduct the impeachment, although he had voted against it. He was obliged to go to Worcester, Mass., to get forms by which he might draw up the articles of impeachment. His speech, which is preserved, written out in full, shows some of the characteristics of his mind, but lacks the heartiness with which a strong man utters himself, when he has full confidence in his cause.

The principal charge brought against Judge Langdon was, neglect of the duties of his office, in consequence of too great devotion to his private business. The following extracts are given, as showing what notions Mr. Smith then had of the duties of a judge. "To say nothing of the great qualities in a judge, knowledge in discerning the true merits of a cause,

rectitude of heart, and strict impartiality in deciding upon it, which are indispensable, I apprehend that a steady and close attention to the business, both in term-time and in the vacation, is equally necessary. Nature hath not been so lavish to any of her sons, as to give them an intuitive knowledge of any science without the labor of close thought and reflection. A judge must be possessed of great patience in hearing, and coolness in deliberating. He must especially disengage himself from all other business and employment, and devote himself to the duties of the office. There is a dictum in one of the books of reports, which, I suppose, will pass for very good law in this court — 'Ye cannot serve God and Mammon' — you cannot be a judge and a merchant. 'T is easy to guess, in this contest, which will get the mastery. I fear, if we look into human nature, we shall find it written in page the first, in very legible characters, that interest will prevail, and that our judge will be more solicitous about fitting out his brig, than about settling a knotty point of law. He will be too apt to be disposing of a cargo, when he should be dispensing justice.

"This attention to private business has been the bane of public justice. To this it has been owing that our courts of law, when they have pretended to sit to dispense justice, have rather dispersed than dispensed it. To the same cause it has been owing, that difficult cases of law have been determined without any deliberation, and the very same question has received different determinations. In short, instead of justice running in a clear, a steady and broad chan-

nel, it has all the impetuosity of a torrent, and, like a torrent, bears down all before it. The consequence has been, that nobody rests satisfied with our legal determinations. It is in consequence of this, too, that the legislature, at every session, are troubled with so many applications to restore persons, suffering by these hasty determinations, to law.

"One end of legal decision of a cause is, to satisfy the parties; but the parties never will be satisfied, unless their cause has been coolly, deliberately, and fully heard. This a judge never will do, if he is entangled with private affairs. The parties think, and have been heard to say, that when the honorable judge's brig goes to sea, he will be more at leisure. If the brig sails or arrives in term-time, the inhabitants of Cheshire and Grafton need not expect to see the honorable judge. These are facts I do not mean to exaggerate.

"With respect to individuals, who have causes pending in court, it is easy to conceive that they must be great sufferers by this delay of justice; though it is not easy to conceive of the full extent of their sufferings. That a poor unhappy citizen, who is so unfortunate as to be confined on suspicion of having committed some offence against the public, should suffer the horrors of imprisonment six months or a year longer, because the court should refuse to sit to try him, and give him an opportunity of showing forth his innocence, is something; that an honest citizen should lose his debt, perhaps his all, because the court neglect to do their duty, is something; that juries, witnesses and parties should

be summoned to attend, and no court to transact business should assemble, is no small grievance."

Judge Langdon was acquitted, and soon after resigned his office.

A little incident occurred about this time which, Mr. Smith said, made a lasting impression on his mind, and which, in the latter part of his life, he used to tell for the benefit of young men disposed to indulge their wit, without regard to the feelings of others. While in the legislature, he one day, by some humorous remarks, raised quite a laugh in the house at the expense of a venerable man, who was universally respected for his delicacy of feeling, good sense, and moral worth. As he was coming out, the Hon. John Pickering, afterwards chief justice of the state, complimented him on the wit and talent he had shown; "but," he added with emotion, "nothing on earth would tempt me so to wound the feelings of a worthy old man like him."

Mr. Smith used to cause a good deal of amusement, by the manner in which he gave an account of his first, and I believe last, military appointment. He and Major Webster, the father of Daniel and Ezekiel Webster, had been delegated by the house, in 1790, to go to Kingston and inform Dr. Josiah Bartlett of his election as governor. They arrived there Saturday evening, went to meeting with the governor on Sunday, and, before setting out with him on Monday, found that he had paid their bills at the tavern. Their approach to the capitol was announced by the firing of guns, which so frightened

their horses that Mr. Smith was thrown flat upon his back. It so happened that the governor's hat and wig fell to the ground at the same instant, and Mr. Smith, with admirable presence of mind, picked them up and gave them back to him. It was supposed that he had leaped from his horse for no other purpose, and on account of the agility he had displayed in horsemanship, he was appointed aid to his Excellency, with the rank of colonel.

In 1791–2 Mr. Smith was a member of the convention, chosen to revise the constitution of New Hampshire. He took, in the deliberations of that body, an active and important part. The records, though he was not the clerk, are mostly in his handwriting; and he must have been of great service in drawing up the different articles. I find his vote recorded in favor of expunging that clause in the constitution, by which "no person can be capable of being elected a senator, (or representative,) who is not of the protestant religion;" an article which is still in the constitution.

An anecdote relating to a period a little earlier than this, and which has nothing to do with legislation, may here be told, as characteristic of Peterborough manners, and as showing how far Mr. Smith would sometimes carry a joke. James Wilson, while a member of college, was suspended for some youthful indiscretions. Mr. Smith intimated to Major Wilson, the father, who, though a sensible man, knew nothing of college rules, that it was probably on account of his extraordinary scholarship that his son had been allowed to come home before his time.

This testimony was in danger of being called in question, by the untimely arrival of a letter from President Willard. Mr. Smith, and very likely most of the wits of the town, (for Major Wilson kept a public house that was greatly frequented,) happened to be there when it came, and the Major's spectacles not being at hand, he promptly offered to read it. He went on with perfect ease reading it, as if it had been a family letter from the Major's brother-in-law, Mr. H——, giving such domestic intelligence, and such an account of the crops, as might be expected from such a quarter. "But what," said the Major, "what is that name I see in the corner? That is not H——; it looks like Willard." "Oh!" said the young lawyer, "he merely says, *I send this by one Jo Willard.*" This was probably received with shouts of laughter by the company present, and Major Wilson's happy delusion was doubtless of short continuance.

In connexion with James Wilson, who was himself a wit, another anecdote, which Judge Smith delighted to tell in Wilson's presence, may be given here. After Smith had been chosen a member of congress, he was travelling with his friend, Wilson, towards Groton. In the course of the day Wilson rode on before his companion, and coming up with a stranger, a sort of horse-jockey, he, for the sake of sport, passed himself off as Mr. Smith, the member of congress. On reaching Groton, Wilson began to boast of what he had done, and how *he* had been taken for the great man. "No," said Smith, "but when you made the attempt the man exclaimed,

'what, *you* Jerry Smith! Why *he* is a respectable man.'"

Doubtless other anecdotes might be given, in which the advantage was on the other side. Mr. Wilson was graduated at Harvard College in 1789, and began to practise law in Peterborough about the year 1792, which, of course, often brought him professionally into collision with Mr. Smith, and which, as Mr. Smith was absent a considerable part of the year at Philadelphia, must sometimes have given him greatly the advantage. He took a leading part in the politics of the state, was, at different times, a member of the state legislature and a representative in congress. He was distinguished at the bar, but too much devoted to his private business to do full justice to his professional abilities. He died in Keene, his place of residence for many years, after having accumulated, perhaps, the largest estate ever acquired by any lawyer in New Hampshire.

CHAPTER III.

1791 — 1795.

IN CONGRESS — FIRST IMPRESSIONS — INVALID PENSIONERS — HAMILTON'S ASSUMPTION OF STATE DEBTS — INDIAN WAR — ORIGIN OF TWO PARTIES — MADISON'S TARIFF — FRENCH POLITICS — DEMOCRATIC CLUBS, ETC.

In December, 1790, Mr. Smith was chosen a member of the second congress, which began its session the 24th of October, 1791. On his way to Philadelphia, he stopped at Roxbury, Massachusetts, to be inoculated for the small-pox. While undergoing this preparatory discipline for congress, he was, according to one who was there with him, overflowing with spirits, and, by his vivacity and wit, contributed greatly to the life and entertainment of the company. His first impressions both of the city of Philadelphia, and of the body to which he belonged, were not of the most favorable kind, as may be seen by the following extracts from letters to his brother:

October 30. "I arrived in this city a week ago, and last evening got into lodgings which I do not like. It

will be impossible for you to have any idea of the difficulty of getting decent lodgings. The accounts you have always had of this great and beautiful city will blind the eyes of your understanding as they did mine. I have had so little experience of congressional life, that I can say but little on that head. I find, however, that this august assembly is composed of men subject to like passions as we. These southern gentry do not please me. There are some exceptions, however, and I intend to cultivate the good opinion of all."

November 22. "I do not like Philadelphia; nor am I very fond of congressional life. I find myself of very little consequence; I am a raw hand, unacquainted with men and the modes of conducting business. The only consolations I have, are that I shall learn, and that I find a few others in my own situation. They (the Philadelphians,) are from the highest to the lowest, — from the parson in his black gown to the *fille de joie*, or girl of pleasure, — a set of beggars. You can't turn round without paying a dollar."

January 12, 1792. "I am glad you have had resolution enough to avoid the loo-table. I am sure my friend Page, &c., spend too much time in this way. I do not think that gambling has any tendency to better the morals, add to the property, or increase the pleasure and happiness of its votaries. From what I have said you will be led to believe that I do not play. In this conclusion you will be justified by the fact. It is not an uncommon thing in this city to hear of a gentleman or lady, losing three or

four hundred dollars at a sitting; nor is it uncommon to hear that the people who gamble so high are bankrupts, and living on the property of other people.

"I spend the greatest part of my time in my chamber with my books, a good collection of which I have purchased. My acquaintance continues to be small, but agreeable enough."

In a letter to A. Moore, Esq., February, 1792, after speaking of a case in which the personal influence of an accomplished woman had effected what argument could not, he adds; "Logicians think that if they can point their artillery at the understanding, and discharge a good volley of heavy shot at the part called the mind, it is a mighty pretty thing. This is a stupid notion of theirs. The mind is a stubborn thing; it has a surprising faculty at dodging these shot. But there are certain other things, which though they have very little to do with reasoning, are strangely convincing."

From a letter to D. Warren, Esq., March 2, 1792. "Do you wish to know in what light I am considered here? Just as Allen is in your house — an illiberal, ignorant fellow, who has never seen the world, who is startled at the mention of millions, who says nothing, except now and then to snarl a little at an extravagant grant of money. I am of too little consequence to be courted by the ministry. We have no opposition, else I believe I should enlist. Don't be easily persuaded, my good friend, that I am altogether inactive and stupid. I am learning, and may possibly some time or other, convince

the world that the fellow has more sense than he appears to have."

His brother Robert, being left a widower, had an inclination to study divinity, and wrote to Jeremiah for advice, who replied, March 29, 1792. "You have yourself suggested the principal objections. I mean the advanced period of life, and the want of early education. There must, in my opinion, be very powerful considerations, to induce one circumstanced as you are, in all respects, to strike out a new course. It would certainly be thought very odd in a traveller, who had performed more than half his journey, who had made himself master of the road, the geography of the country through which he had to pass, and who, knowing the difficulties that would naturally present themselves, had learned to overcome them, to desert the old beaten path and to enter upon a new one, lying through a country rugged and unknown. I am by no means satisfied that a change of pursuit would either promote your happiness, interest or usefulness. But if you are of a different opinion, (and you certainly are the best judge,) it would be necessary for you to spend a year or two in preparatory studies, in which it may be in my power, and I shall certainly have the inclination, to assist you. I have purchased a very good library, as well in other branches of learning as in law. A small number of these are theological, and excellent of the kind. I intend to have a good library in divinity, but I fancy it will not be that kind of divinity, which will be agreeable to you. I have but an indifferent opinion of the clergy in this quarter, and think them inferior

to those of New England. One hears in the churches in this elegant and polite city a great deal of rant, nonsense and stuff, which would disgust one of our country congregations. What must the country here be! I anticipate, with some degree of pleasure, the opportunity I shall have of improving the summer coming. I am not a man of pleasure, and have been even in Philadelphia, more studious than I have been at any one period of my life heretofore. I consider it as among the number of unfortunate circumstances attending me, that I could not have had a good collection of books when I left college.

"I am not at all attached to congressional life, and can return to private life not only without regret, but with much pleasure and satisfaction. My *standing* here is as good as I ought to expect. In time, I think I should learn my duty. I have no doubt of my independence or integrity, to perform it faithfully."

In a letter of the same date to his brother John he says, "I have written R. If you are right in your conjectures as to the new courtship, it will probably prove more efficacious in preventing a change of pursuit, than anything I have said in my letter to him.[1] I begin to form some acquaintances in this city, which afford me much pleasure. I am almost in love with a little Quaker. They (I mean the ladies of that society) are gay, sprightly, sensible. But you know I am easily caught. I am anxious to be home, that I

[1] It was even so; R. was married, and nothing more was said of a change of profession.

may enter upon that course of study which I have marked out. I must begin. I find I know nothing. I shall have an elegant assortment of books. Business goes on very slowly in congress. It is no breach of charity to suppose that the members are at least as anxious to promote their own, as the interest of the public, — I mean in creating offices, and getting themselves or friends appointed to them. For, as to the wages and pay of a member, when you deduct the expenses, of which you can have no idea, — to say nothing of the sacrifices that many must unavoidably make in business at home, — it cannot be considered as a great temptation to protract the business."

The consciousness of his own ignorance, not wasting itself in peevish remarks on others, but awakening within him a longing for improvement, not only in his own profession, but in all generous and useful studies, was the secret of Mr. Smith's subsequent distinction and success. Through life it was his wish to fit himself for important stations, and the society of distinguished men. If they sought him out, he was gratified; if not, he may have been disappointed; but, in forming and carrying out yet larger plans of intellectual advancement, he always had at hand resources and occupation, which might take from disappointment its sting, and give a healthy exercise both to his mind and heart.

During the first two sessions of congress that he attended, he was, according to his own intimation, rather a learner than an actor. His previous experience in political life, obliging him to spend so much time on the laws of a single state, while it undoubt-

edly sharpened his faculties, had yet prevented his attending, as he otherwise might, to the national government, and taking those large views, which should direct the legislation of a great people. In matters of a more limited and private character, he acted with great spirit and discretion; as, for example, in the case of the invalid pensioners. "It gave me pain," he said to a member of the legislature, "to learn that after the public (you will excuse me, but I mean the *former* legislatures of New Hampshire,) had practised sharping on the poor invalids, by compelling them to receive their depreciated paper, that these unfortunate souls should have been imposed upon by that rascally tribe of speculators and sharpers, who, like their master, travel up and down through the country, 'seeking whom they may devour.' By examining the papers which I enclose, (and which may be authenticated if need require,) you will perceive how successful W. has been in this speculation. You are not unacquainted, I suppose, that congress, at their second session, made provision for the payment of the arrears of pension, (meaning what was due till 4th March, 1789,) in register certificates, to be issued at the treasury of the United States; and, I dare say, know that these certificates are worth more than twenty shillings on the pound. If the deceit practised on these pensioners, in the instances alluded to, can be proved, and they should think it advisable to prosecute W., I shall most cheerfully procure any evidence that may be necessary at the treasury. I never feel so confident that I am in the way of my duty, as when I am employed in detecting

and punishing villany, especially when an honest, simple person is the object of that villany."

In matters of great national interest it may be questioned whether Mr. Smith was qualified to act with the same discretion. He examined them from too low a point, and came to conclusions which his riper judgment could hardly approve.

"Some people," he said, in a letter to Governor Bartlett, April 6, 1792, "act upon a scale too large for me; they talk much of the good of the whole." . . . . . "I asked Mr. John Langdon, if he thought New Hampshire would prove a debtor to the Union on just settlement." "No." "Then upon the principles of these two assumptions, as contemplated by the secretary of the treasury, will we not be paying seven or eight hundred thousand dollars of the debt of some other state?" He replies, that "It is a *great national* measure! — that New Hampshire does not contribute her proportion of the public revenue." "I write this in the most perfect confidence. It does not become me to lay claim to more knowledge or patriotism (I mean fidelity to my state,) than other gentlemen possess."

Hamilton's measure for the assumption of the state debts had been adopted before Mr. Smith was a member of the house. But he was vehemently opposed to it; and the following extract from a letter to Gov. Bartlett, Dec. 24, 1791, in respect to a spirited memorial on the subject from the legislature of New Hampshire, may serve as a specimen of his mode of reasoning at that time, "It was undoubtedly reasonable that the claims of the several states, for services and expendi-

tures in the war, should be adjusted on principles of equality, in order that the delinquent states should be compelled to pay, as well as the creditor states be entitled to receive, the balances respectively due. The idea of assuming, or, which is the same thing, paying balances, before the accounts are adjusted, is altogether new. 'T is uncertain ground to go upon, and it would be little less than a miracle, if the result of the final settlement of accounts should justify this measure. If the assumption was intended to give relief to the states from the burthen of their debts contracted during the war, it should have gone further, and the whole state debts of this description should have been assumed. If it was intended only as an advance payment to the states, then the debts only of those states to whom balances will probably be found due, should have been assumed. Congress never could have been influenced by the first of these motives in assuming two hundred thousand dollars from Delaware, for they owed none; nor by the second of these principles, in assuming twenty-two hundred thousand dollars from Pennsylvania; for it seems granted, on all hands, that they are a debtor state.

"I have puzzled my brain, to know upon what principles this business was conducted, that I might have it in my power to point out the badness of them, or show wherein they had deviated from them, if good; for it is clear that injustice has been done. But, after the most painful search and inquiry, I have never yet been able to find that they were actuated in managing this business by any principles at all, unless those principles which govern sharpers, right

or wrong to get the best bargain they can, may be denominated such. It has, I confess, always been matter of astonishment to me, that there could exist a man so weak, as to be duped by the states who pressed this measure, and who alone were to be gainers by it. Having troubled you with my sentiments on this subject, which I believe are such as generally prevailed with the legislature in framing the memorial referred to, I would take the liberty to observe that the idea of rescinding the act assuming the state debt is altogether inadmissible, and the thing wholly impracticable; as the rights of individuals have become blended with public measures and must be held sacred."

These remarks should undoubtedly have weight as applied to particular provisions[1] of the measure, which may have been introduced only to secure the support of states that would otherwise have prevented its passage; but they do not even glance at the broad principles which lay at the foundation of Hamilton's policy, and which prove the greatness of his genius, and the profound, far-reaching wisdom of his public conduct. The union was then little more than a political form. It had not been established by the happy experience of many years, and strengthened by the affections of the people. The constitution, which was a compromise of local interests, and adopted by a small majority as the best that could be had, was not hailed with anything like a general enthusiasm.

[1] Some of these provisions fell with peculiar severity on the state of New Hampshire.

It was looked upon by its ablest supporters only as an experiment. There was no strong attachment to it; and, for some time after it was adopted, among the representatives of these several independent states, the feelings of national pride and honor, through which they were to be bound together as members of a great national confederacy, hardly had an existence, while local jealousies were even stronger than at the present day. The sentiment of loyalty to the parent country, which had been weakened by our whole experience as colonists, and fatally severed by the revolution, had as yet no new object to which it might attach itself. That nameless influence, which binds a people to their country; the associations, which through a thousand years have been cementing their affections to their government as by the blood of their fathers, and uniting them in one by the great achievements and great names, which have come down as their common inheritance, had no existence here. The common dangers which allied the colonies during the war, had given place to conflicting interests, and except the name of Washington, there was nothing which had enough of a central, gravitating power, to draw towards a common point the diverging affections of the people, and to serve as a nucleus, around which the associations of national honor and respect might gather. Washington's influence was soon to pass away. And without some strong central and centralizing power, the confederacy must soon have split into fragments. In this point of view, it is impossible to over-estimate the practical and far-reaching wisdom of Hamilton's

first great measure, the assumption of the state debts. As a financial measure, (and, if proposed now, it would be viewed only as such,) it may or may not have been expedient. This was only a secondary consideration. In its more extended bearings, assuming as it did on the part of the general government, a national guardianship, and serving thus to bind into one body these different and otherwise conflicting members, and give to them a national character, it answered a far more important end than the immediate purpose for which it was designed.

The great measure of the first session of the second congress was a bill to increase the army for the protection of our frontiers. Mr. Smith voted steadily against it. Some remarks on this subject we have already quoted. The following extracts from a letter to his brother, John Smith, March, 1792, relate to the same subject.

"The annual expense according to calculation (and experience always shows that calculations are too small,) will exceed a million of dollars, and all this to gratify a parcel of fellows, who do not care whether the country sinks or swims, provided they can make their own fortunes. Land-jobbers and a set of rascals on the frontiers, who are interested in kicking up a dust, are the cause of the war. I have uniformly voted against this standing army, not that I apprehend any danger to our liberties from it, but merely because I do not like the expense. I dare say I am thought a very illiberal fellow; — a term which is here applied to every man who votes against large grants, salaries, &c. I would not be understood as speaking

against the powers that be; though I do not believe they are ordained of God. The government is, I think, in the main good. I detest faction. There are here some very rich men, who certainly do not sympathize with their constituents. They affect to consider a million of dollars as nothing! They talk of raising money by direct taxation, as a measure highly expedient. As long as the money to pay the charges of government is raised by the indirect and imperceptible mode of impost, excise and duties, the people will not murmur at the high salaries, pensions and profuse grants; but the moment recourse is had to dry, hard taxation, the spirit of inquiry will be roused, and the expenditures will be minutely investigated. I never wish to see that day arrive. I dare say all this political stuff will appear to you extremely insipid, now that you have it in your power to employ your leisure moments in domestic felicity. Blessed change, from the company of drunken randys, &c., to the agreeable society and charming conversation of your lovely wife!"

Mr. Smith's political opinions, and even the principles on which they might rest, were not yet established. Indeed, the public opinion of the country was yet unorganized and unformed, without fixed rules or principles of political action. From this heaving mass of almost chaotic opinions, at first hardly perceptibly, but at length through excitements and commotions that shook the whole fabric of society, two great political parties were rising into shape, and arraying themselves against each other. Hamilton and Jefferson were the leaders in this

movement ; but it arose from causes deeper than the personal feelings or opinions of the two secretaries. They were but the representatives of two great systems of policy, springing out of our condition as a nation ; and however these systems may be affected by temporary measures respecting war or peace, slavery or commerce, or particular electioneering organizations, growing out of personal or local interests, they must still continue to be the principles of political division, throughout the country. There is a constant tendency to foment ill feelings on the score of opposite and warring local institutions, and if it should go on without interruption, it must necessarily lead to entire alienation and hostility between the two large sections of the country. But this other movement, by introducing new subjects of controversy, and dividing the country on other than local grounds, absorbed to itself passions, which if wholly spent in local contests, would long since have put an end to our national existence. Thus, when, on the assumption of the state debts in 1790, New Hampshire and Virginia were arrayed against Massachusetts and South Carolina, something was done to prevent the organization of the North and the South against each other, and to allay the bitterness of local jealousies.

The great division into parties was not fairly perceptible, until the first session of the second congress. Towards its close, the beginnings of such an organization were manifesting themselves. In a letter to his brother, 20th April, 1792, Mr. Smith says, " Everything now [at the latter end of the session,]

grows languid, dull, and heavy; and there seems to be nothing stirring amongst us, save a little *nature*, which I believe will hold out to the last. There are two parties here. I belong to neither. I mean the friends and enemies of the funding system. I do not find that harmony in the public councils which I expected. Those who are interested in the funds, stock, bank, &c., support every measure of the secretary of the treasury, whilst those who are out of the funds (meaning the Virginians, &c. &c. &c.) oppose every measure of his, however wise and good. The good of the whole is not a primary object with either of these two classes. The one zealously contends for measures which will tend to increase the public credit, because at the same time he advances his own private property; whilst the other would be willing, like Samson, to pull down the mighty fabric of public credit and confidence, because it would overwhelm his enemies, (the stockholders, &c.) though he himself should be buried in the ruins."

The next session of congress (1792–3) was passed without any very important public measures; but was marked by an increased irritation of party feeling, and by the beginning of the difficulties with the French republic. Mr. Smith, whose health was most of the time poor, continued to look carefully into the progress of events, and applied himself diligently to reading, being still, less an actor than one preparing himself for future action. In the mean time he had been reëlected, and was evidently much gratified by the result. In a letter to his brother,

John, November 15, 1792, he says, "I have seen the event of the voting for representatives to congress, from New Hampshire, and am disappointed and exceedingly gratified. I find I had all the votes of Hillsborough, Cheshire, and Grafton, and a majority in each of the other counties. I wish my friends may know how much I feel myself obliged, by this flattering proof of their attachment, and the disposition I feel to seize every opportunity of testifying my gratitude. I do not think that I needed any additional motives to stimulate me to fidelity, and the most strenuous exertions to promote the interests of the state. If I did, this unexpected proof of public confidence would certainly operate powerfully."

The following extracts from letters will sufficiently show Mr. Smith's feelings, during the first session of the third congress.

To Samuel Smith, February, 1793. "I approve of your passion for Miss G.; prosecute it with ardor. I am under the influence of a similar passion — a hopeless one too. I don't mean that my fair one frowns on me; in that case I should very soon cease to love her. But prudence dictates to me the impropriety of such an attachment, and probably the same prudence suggests the same thing to her. A Philadelphia belle would make a strange wife for a poor man in New Hampshire. What a strange set of creatures we are! It seems to me now that I never sincerely loved before. God grant that time and absence may have their usual effects.

"I was determined to purchase no more books,

yet I have expended sixty or seventy dollars in that way. This rage for books will ruin me ; and that rage for building mills, barns, dams, pearl-ash houses and castles, will, I fear, prove the destruction of you."

To his brother Samuel, 28th January, 1794, he writes: — " We are now debating the propositions made by Mr. Madison, for laying additional duties on the manufactures of Great Britain. If these should obtain, it will still more favor the American manufacturer. I shall oppose these resolutions, because I conceive they will upon the whole be injurious. If I consulted no interest but yours, I believe I should favor the resolutions."

To Robert Fletcher, Esq., 12th February, 1794, he says : " I am sorry that French politics gain ground with you. They are my utter abhorrence. I almost hate the name of a Frenchman. They have opened some leaves in the volume of human nature, that I never believed were in the book. They have done the cause of liberty an irreparable injury. I do not wish them success. Their principles are hostile to all government, even to ours, which is certainly the best. You will have seen Madison's propositions to regulate commerce ; calculated to stir up a war between Great Britain and us. I attribute these propositions to French influence. I do not mean that the advocates of these measures are bribed by Citizen Genet ; but I consider them as resulting from that childish and nonsensical attachment they appear to have for Frenchmen and French politics, which leads them to put in hazard the true interests

of this country, to gratify their resentment against Great Britain. It is now certain, beyond all possibility of doubt, that Genet, in his constant and unremitted endeavors to plunge this country into the war, was only pursuing the instructions he received from his government. Though this may in some measure palliate his abominable lies, duplicity, &c., yet it ought to make us hate and detest his nation. On these resolutions, your brother Dexter [1] made a very eloquent and sensible speech, which was universally applauded ; and his character already stands high. There is no danger of his sinking in public estimation, for his talents are solid, and his integrity and honesty inflexible."

To Samuel Smith, 14th April, 1794, he writes : " We are now debating the propriety of withdrawing ourselves from any commercial intercourse with Great Britain. I think it will pass the house, but fail, at least in its present shape, at the senate. We are in a most horrible passion ! How we should act, provided there was any fighting in the case, I can't say, but certain it is that we scold most courageously."

In a letter to William Plummer, dated 8th May, 1794, he says : " My dear friend, your letter of the 28th April, I received by the last mail. It could not fail of giving me pleasure, as it contained assurances that my political conduct has your approbation, as well as that of ' the more considerate and well-informed ' among the people at large. I have been,

[1] Hon. Samuel Dexter, of Massachusetts.

and I believe always shall be, among the number of those who deprecate war. Those who have, in the course of the session, advocated Madison's resolutions, sequestration, the bill to suspend the trade and intercourse between the United States and Great Britain, and other measures of a similar nature, make the same profession ; at least most of them do so. I have no doubt but that some of them are honest ; some of them are not. Taylor and Monroe, the two Virginia senators, on Monday, moved in the senate, for leave to bring in a bill to suspend the execution of the fourth article of the treaty of peace, that is, to put a stop to the collection of British debts. This leads us strongly to suspect, that their hostility and rage against Great Britain, is not so much the pure fire of patriotism, (which they pretend,) as it is the flame of self-interest. In this motion they were most shamefully defeated, and, upon a division, stood alone. Their friends thought the measure too glaring, and deserted them, leaving the senate, when the question was taken. I know it is common for parties to charge each other with bad intentions, sometimes, no doubt, without any foundation. Both may mean honest, but I believe that is not the case at present. They charge us with monarchical and aristocratical principles ; with designs to change the constitution, and subject the people to slavery ; with being the agents of Great Britain ; under British influence ; friends of the funding system, and in favor of a great national debt. Now this is so impudent a calumny, and so without the shadow of probability, that I do not believe that they believe a syllable of the matter

themselves; and yet in this ignorant and stupid place, there are not wanting persons who are trembling for their liberties, and really alarmed for their privileges. The democratic societies have undertaken the guardianship of the rights of the people. They are ever and anon blowing the trump of faction, and warning the people of their danger; puffing the members of congress who are for sequestering British debts, and widening, instead of healing, the breach between Great Britain and us. Need I add, that this renders our situation uncomfortable — to me it is hateful. This zealous attachment to the rights *of the people*, this bellowing against monarchy, aristocracy, national debt, &c., this scorching fire of patriotism would be suspected, with us in New Hampshire, but here it answers a good purpose."

Mr. Smith now felt more at home, and enjoyed himself more than at any previous session. "On the 9th of June," says Marshall, "this active and stormy session was closed, by an adjournment to the first Monday of the succeeding November." The next session was to have commenced on the 3d of November, but there was not a quorum till the 18th. Party divisions had become more fixed, and entered more deeply into social and personal relations; motives, as well as measures, were severely commented upon; and if less was done than at the previous session, it was only because the tempestuous strife had subsided into a sullen calm, while both parties awaited with anxious interest the result of the mission to England.

The following extracts will show what were the feelings of that day.

To Samuel Smith, 20th November, 1794. "I inclose the president's speech. It is very popular with the friends to government; we consider what he says of self-created societies, and combinations, disregarding truth, &c., stirring up insurrections, &c., as too applicable to democratic clubs, &c., to admit of any mistake as to the application of it; we smile, and they pout. They feel it. Let their mortification be increased tenfold."

To the same, 29th November, 1794. "We have been engaged the whole week in framing an answer to the president's speech. The persons with whom I act wished to express an opinion that the democratic clubs had fomented and stirred up the insurrection, in the western counties of Pennsylvania. This was opposed by our southern brethren, who feel a wonderful sympathy with these inflammatory clubs. On the question, which we considered as the main one, the house was equally divided, and the speaker, who belongs to a club of democrats, gave the casting vote against us, so that our answer is chips and porridge. I feel provoked. What a mercy it is that I have not your troubles to add to mine, and that you have not mine to add to yours!"

To John Smith, 6th December, 1794. "An account of congressional proceedings would give you no pleasure. Except the attack on democratic clubs, we have scarce had any debate and very little business. We are lying on our oars till we hear from Mr. Jay. If his mission is favorable, we shall do very well; if not, the devil will be to pay."

Mr. Smith's interest in public affairs may be seen in the following extracts, relating to the election of United States' senator from New Hampshire. His temperament was one of the most hopeful, and hardly in all his confidential papers, have I found anything like despondency or gloom. What follows here, as in many other parts of this memoir, is of course to be taken as a picture of the writer's feelings at the time, and not as an impartial estimate of character.

To William Gordon, Esq., 17th December, 1794.

"It is quite natural, too, that your detected villains, who dread the whip of the law, should contemplate with satisfaction the annihilation of order and government; but that a man circumstanced as Mr. L. is, should lend his aid to the enemies of the rights of property, to the enemies of order and good government, the enemies of the peace, and, in my opinion, the independence of this country, these things surprise me. Perhaps Mr. L. does not intend any such thing. A man is in a situation not much to be envied, when his friends are under the necessity of justifying his heart at the expense of his head. Besides, in the present case, it would be peculiarly unfortunate; because friend L. can suffer very little deduction there, without being reduced to a size which would baffle the naked eye, and even set at defiance all the microscopes that have yet been invented. Our affairs are, at present, so critically circumstanced, that a single vote in the senate is worth perhaps as much as the peace, prosperity, and happiness of our country. I am mortified that New Hampshire should be divided as they are in the senate, on all occasions where na-

tional questions are involved. Undoubtedly every public man should act his opinions, whatever they may be; but certainly I would not choose an agent who should do the things I would not. Besides, I can hardly muster up charity enough, with all I can borrow from my friends, to persuade myself that these things are the effects of conviction. He has been flattered into a belief, that if he will wear the southern livery, he shall be made the second man, as it were. Now though this flattery is gross, yet that is no reason why it should not be greedily devoured. Flattery, unlike other food, seems to be swallowed the more greedily, the coarser it is. But I am running into reflections which always make me gloomy. This same government of ours is built on the pillars of public virtue and public opinion, say our wise men. The wise and the good, when united, are still a minority, I fear. When desertions take place, the case becomes desperate, and in such a case, true wisdom consists, not in attempting any longer to support the tottering fabric, but in running away, as far as you can, so as not to be injured by its fall."

To R. Fletcher, 3d January, 1795. "I am anxious to hear who is chosen senator. The lot is by this time cast. I am afraid 'the Lord has had nothing to do with the disposing thereof.' Supposing L. to be the man, I am beginning to reconcile myself to it. If he is not elected, he will, I fear, be soured, and rear up an anti-federal party in the state; set up democratic clubs, and poison the pure principles of our virtuous citizens. Let our people fall into the hands of the devil, but let them not fall into the

hands of these men; famine, the plague, and pestilence are nothing to it. By the way, we are all hugely pleased with parson Osgood's Thanksgiving sermon; we extol him to the third heaven, and swear (it is in a good cause you know) that he was inspired! If the virtuous members of congress (meaning those of our party) had the power to confer degrees, he would instantly be daubed over with titles. We think he as richly deserves it, as ever King William, in Corporal Trim's opinion, did a crown. It is proposed to print an edition in this city, for the use of our brethren at the southward. We are afraid, if we do not alter the title-page, it will be a sealed book. But, what is very unusual, it has been published entire in a newspaper in this city, and, I believe, read by many people who were never, in the whole course of their lives, in the inside of a church. I am charmed with your picture of a family party at Christmas. It must be the most delightful thing in the world. Tell Mrs. F. that I should have been very happy to have made one of your little society, and that I am confident she enjoyed far more pleasure, surrounded by her children and friends, than Mrs. Dexter, at Mr. Bingham's, Mr. Morris's, or even the President's sumptuous dinner. I was singularly happy on that day myself; dined with a number of my friends at Mr. Wolcott's, (who, by the way, will be secretary of the treasury, in the room of Col. Hamilton,) and spent the evening in company with a divine woman I have lately become acquainted with, and who is all that woman can or ought to be; but, heigh ho! she is as good as mar-

ried. I am glad I was informed of that circumstance, else I should have been over head and ears in love. Informed of my danger, I find it difficult to restrain my ardent affections. I am glad to find that I am not dried up and congealed, but that my heart is as susceptible as ever. I had rather be a man, and feel as such, even if I suffer by it, than be one of your insensible devils."

To R. Fletcher, Esq., January 7th, 1795. "You wish for a list of congressional actions. There are but few entries, and those few unimportant. I was doubtful whether we could have spun out the time till the third of March; but, thanks to some of our chattering geniuses, we are out of all danger of a premature death. We are of opinion with good old Cato, in another case, that we ought to draw our term of *service* out, and spin it to the last; and that one year of congressional life is better than a whole eternity at home. I will enclose some newspapers, if I can pick them up before I seal this letter, by which you will see that we have been much engaged in amending the law for the naturalization of aliens, particularly a motion made by Mr. Giles, to make it necessary for an alien nobleman, previous to his becoming a citizen, to renounce his title. This naturalization is very warm work.

"Giles's motion prevailed. It was made, I presume, with a view to cast odium on the New England aristocrats, who, it was foreseen, would vote against the motion, as altogether frivolous and ridiculous. I dare swear it will occasion a great bustle, and that the *Independent* Chronicle, (that is a paper entirely

devoted to a party,) will teem with abuse. Here's a fine set of fellows for you! for introducing nobility from Europe! Don't you tremble, my friend, for the liberties of your poor country? Depend upon it, we are in great danger from the introduction of monarchy and aristocracy. We shall certainly be tricked out of our liberties if we are not very jealous! Here you see what a narrow escape we have had; even Madison, the watchful guardian of American liberties, the vigilant Madison, slept. He brought in the bill, and had omitted this clause. But the saviours of our country must come from the south — his colleague, Giles, has the consolation to reflect that he has rescued us from the most imminent danger! Let the praises of the geese who saved Rome, no longer engross the public approbation; certainly, in all modesty, Giles may divide the matter with them. Don't tell me there is no danger; oh blindness and stupidity! Fools can fear when there is any danger — wise men manage the matter much better; they, honest and sagacious souls, espy dangers that never did, and never can exist. Did not Rome produce a Cæsar? Think of that! May not America do the same? Answer me that. Who would, then, place any confidence in a public officer? Certainly not true republicans; they know that the only way to be faithfully served, is to distrust and abuse all their officers. Let monarchs caress and reward their faithful and trusty friends and servants. They must be strangely ignorant of human nature, indeed! Our method is both economical and safe; first, to cheat them out of their wages, and then, to prevent the

effect of their clamor on the world, vilify and abuse their characters. Huzza for the new invented maxims of government! Pardon me, my friend, I can proceed no further; I am so sick of this nonsense, which is daily ringing in my ears, that I ardently long for the moment when I shall bid adieu to Philadelphia, and exchange its follies, noise and nonsense, for the simplicity, the quiet and peaceful regions of New Hampshire."

To Samuel Smith, 31st January, 1795. "The time of our dissolution draws near, and I, like other good Christians, view its approach with calmness and serenity, indeed with pleasure. I can give up the plays, parties and public entertainments of the city, for the repose and wholesome atmosphere of the country, and make a good exchange. Not being a man of pleasure, I make but little sacrifice in quitting the gay scenes; my brethren here cannot all say so. Many of them plunge into the vortex of dissipation; they do not always escape unhurt, but like the mariners, who have been shipwrecked in nine voyages, will venture on the tenth."

To the same, 11th February, 1795. "There is now no doubt that the treaty of commerce, &c. is concluded by Mr. Jay, with the British court; though it has not arrived in America yet. The uneasy spirits who have used their endeavors to plunge this country into the war which desolates Europe, have opened their foul mouths against it, though they do not even know what it contains. This is no reason, however, why they should not abuse it, and they would act inconsistently with themselves, if they did not shoot

arrows in the dark, and endeavor to wound the character and conduct of those to whom this country is indebted for the peace and prosperity we now enjoy. The supreme court of the United States has been one week in session. I have been pretty constant in my attendance there and in congress, so that I have but little leisure or time that I can call my own."

To the same, 25th February, 1795. "Your letter on Monday found us all up in arms; the whole city turned topsy-turvy, mad with joy. It was the day we celebrate the president's birth. We had a great deal of marching and counter-marching, processions, firing of cannon, ringing of bells, &c. Everybody waited on his highness, to congratulate him on the event of his growing old. In the evening a very splendid ball was given in honor of the day. The president and lady, the ministry, foreign ambassadors, the members of the two houses, attended. Such a display of beauty, dress, &c. my eyes never beheld before. If the president does not rejoice that he is *a year* older, I am sure he might be glad that he is *one day* further advanced. Monday must have been very fatiguing to him. I will not be president, even at thirty thousand dollars per annum, though that would be a fine thing to keep your mills a-going. The treaty, concluded by Mr. Jay, does not arrive; it is said the vessels intrusted with it and duplicates, have been taken and lost, so that we do not expect it before the adjournment, which is next Tuesday. The session has been rather peaceable, it bids fair to end in a dead calm. I begin to hope that our political sky will become more serene. Last winter, it was stormy enough, in all conscience."

During his whole congressional course, Mr. Smith was, perhaps, more intent upon becoming a lawyer than a statesman. Whenever his other duties would allow it, he constantly attended in the supreme court of the United States, to make himself familiar with the ablest practice at the bar, and the best judicial forms. He was also deeply interested in the New Hampshire courts. In a letter to his brother John, January 31, 1795, who was then in the legislature of New Hampshire, he asks, in reference to the chief justice, "Why did you not remove him? Surely there has been time enough for experiment. Want of nerves, (or whatever his disorder may be,) as effectually disqualifies him for the office he holds, as want of integrity or capacity. If he and D. were both removed, I do not believe the vacancies would be *well* filled; but the main thing is, to have them filled with men who would do their duty in attending at the several terms; for be assured, it is of more importance that causes should be *tried*, than that they should be *well* tried." Singularly enough a letter dated the 3d of February, 1795, came to Mr. Smith, from the Hon. James Sheafe, one of the most wealthy, influential and respectable men in New Hampshire, and Mr. Smith's warm personal friend, urging him to use his influence in securing the appointment of this same gentleman to the office of district judge of the United States. Mr. Smith's reply may be taken as a specimen of mild but manly independence, such as cannot be too strongly recommended to our public men. "Dear sir: your letter of the 3d February I received by the last mail. Mr.

P. was appointed district judge before your letter came to hand. I congratulate you on this event, and assure you that I participate in the pleasure it must afford him and his friends. You will not call my sincerity in these professions in question, when I add that I should have given my voice, if I had been consulted, in favor of another. . . . . I am very happy to learn that Mr. P.'s health is restored; it is the only circumstance which has prevented his talents from being eminently useful to his fellow-citizens."

Mr. P.'s abilities, legal attainments, and integrity were unquestioned, but if Mr. Smith's advice had been followed, it would have been better for all concerned. The public would not have been shocked by what seemed, in his conduct, a burlesque upon the solemn forms of justice; his friends would have been spared the pain of finding that attributed to fraud, which was only the result of mental derangement, nor would the nation have witnessed the sad spectacle of its highest tribunal removing from the bench, by impeachment, a worthy man, whose faculties, at the time, were not such as to enable him to answer, or even to understand, the charges that were brought against him. It was not the least singular part of these extraordinary proceedings that he, who was the most active in removing him, and who succeeded to his place, passed the latter portion of his life under the same heavy calamity, which through his influence had been solemnly imputed to his predecessor as a crime!

CHAPTER IV.

1795 — 1797.

IN CONGRESS — JAY'S TREATY — FISHER AMES — MR. SMITH'S MARRIAGE — WASHINGTON.

THE next session of congress was one of those critical points in our history, which give a direction for years to the course of public events, and establish that interpretation of the constitution on which the stability of the government depends. Difficulties, which, unless soon settled, must inevitably have led to war, had, since the peace of 1783, existed between this country and Great Britain. In the spring of 1794, John Jay, then chief justice of the United States, was appointed envoy extraordinary to adjust these difficulties. He arrived in London the 15th of June, and on the 19th of November had succeeded in forming with the British government a treaty of amity, commerce, and navigation, which was not, however, received at the department of state in this country, till the 7th of March, 1795, a few days after the adjournment of congress. No pains, as we have seen by Mr. Smith's letters, had

been spared to excite a violent prejudice against it, before any of its provisions were known, and even before it was certain that a treaty had been formed. On the 8th of June, the vice-president and senate met, and on the 24th, after having given to it the full and serious deliberation which the importance of the subject demanded, by a vote of precisely two-thirds, advised and consented to its conditional ratification, and adjourned without removing the injunction of secrecy. But, immediately, an imperfect abstract, and, in a few days, a complete, but, of course, unauthorized copy of the treaty, was published. In the whole history of political and party strife, it would not be easy to find a more violent attempt to poison, mislead, and exasperate the public mind, than now ensued. Everywhere public meetings were held, and by inflammatory harangues, misrepresenting the conditions of the treaty, and holding it up as fraught with consequences the most ruinous and dishonorable, the passions and prejudices of the people were roused to the highest pitch. Addresses, almost simultaneously, from all parts of the union, from Boston, New York, Philadelphia, Baltimore, and Charleston, and then from the smaller towns and remote country districts, were poured in upon the president, urging him not to give his assent to the treaty. "It is difficult," says Judge Marshall,[1] "to review the various resolutions and addresses to which the occasion gave birth, without feeling some degree of astonishment mingled with

[1] Life of Washington, vol. v. p. 626.

humiliation, at perceiving such proofs of the deplorable fallibility of human reason." Yet while the one party were so violent in assailing the treaty, the other was not equally prepared to defend it, and, for a time, seemed bent down by the rush of the popular torrent. To the president the condition of things was perplexing in the extreme. In a private letter to the secretary of state, dated the 29th of July, he says, "I have never, since I have been in the administration of the government, seen a crisis which, in my opinion, has been as pregnant with interesting events, nor one from which more is to be apprehended." But he was not moved from his purpose. "All these things," he added, in a letter from Mount Vernon, of the 3d August, "do not shake my determination with respect to the proposed ratification." He reached Philadelphia the 11th of August, and on the 18th signed the treaty. Until now no attack had been made upon the president. Whatever else had been assailed, party violence, in its extremest rage, had not dared to lift its hand against the spotless majesty of his character. But now it was more than insinuated, not only that he had violated the constitution, for which an impeachment was publicly suggested, but that he had drawn from the treasury, for his private use, more than the salary annexed to his office. So boldly, and with such a show of evidence, was this charge made, that the confidence of some, even among the faithful, was for a moment shaken, and they feared lest some signal indiscretion or mistake might be proved. But party malevolence itself was, at once and forever, silenced

on that point by the statement of Colonel Hamilton, who, though not in office since the last day of January, had been secretary of the treasury at the time the peculation was said to have taken place.

Another event meantime had occurred, which, for a short while, almost rivalled the British treaty in the interest it awakened. Through a letter from the French minister, M. Fauchet, which had been intercepted on its way to France, circumstances, never yet satisfactorily explained, were brought to light, which left strong suspicions on the mind of the president, that Edmund Randolph, who, on the 1st of January, 1794, had succeeded Mr. Jefferson as secretary of state, had been drawn into an improper, if not criminal, intercourse with the French government. The president, to whom the letter had been communicated by the British minister, in the presence of the other members of the cabinet, handed it to Mr. Randolph, who, on reading it, immediately and indignantly resigned his office. This took place on the 19th of August, the day after the treaty had been signed by the president.

When congress met in December, 1795, it appeared that a large majority of the house were opposed to the late measures of the administration. The treaty, which had been only conditionally ratified, was waiting till the conditions should be assented to by the British government, and therefore, except in the address upon the president's message, could not in the early part of the session, be brought before the house, which was mostly taken up with matters not of a party nature. Among other things,

with that passion for stage effect, which is so characteristic of the nation, the flag of the French republic was, through the president, presented to congress, as a mark of the enthusiastic attachment existing between the two governments. It was difficult for Washington to refuse this token of friendship, and yet, with his severe taste, it was also difficult to know how to receive it. The great topic, however, of interest through the winter, was the treaty, which, at length, on the last day of February, was announced to the people of the United States, by a proclamation of the president, which on the following day was communicated to the two branches of the legislature.

The feelings which, while the house were engaged on other subjects, had been but poorly concealed, now burst out with open violence. The contest was begun by a resolution offered by Mr. Livingston, of New York, requesting the president to lay before them the instructions of Mr. Jay, and the correspondence, and other documents relating to the negotiation. After an exciting debate, in which all the powers of reasoning and the passions of party strife were engaged, the resolution was carried, on the 24th of March, by a vote of sixty-two to thirty-seven.

The president, after deliberately weighing the subject, on the 30th of March sent to the house a message, in which, with great dignity and firmness, he refused to comply with the request. This decisive step seemed to break the last cord of union between him and the leaders of the opposition. An angry

discussion followed on the treaty-making power, and resolutions adverse to the message were passed, by a large majority. Another battle-field, however, still remained. On the 13th of April, when a bill to make appropriations for carrying out the treaty, was introduced, the whole matter was again brought up under a new aspect, and a debate yet more remarkable for strength of argument, and the earnestness of its appeals to the lowest and the loftiest of political passions, was finally closed on the 30th of April, two days after Fisher Ames's great speech, which produced an effect probably never exceeded by any speech in the halls of congress.

Time had now been given to the people for mature consideration. The first vehement emotions had subsided. Misrepresentations had been corrected; argument had succeeded to declamation, and, through the writings of the ablest men, especially the essays of Camillus,[1] the popular current was changed. As before against the treaty, so now in its favor, petitions from all quarters came pouring in upon congress, and the majority of the house, to their consternation, found themselves supported by a minority of the people. This produced such an effect, that when the vote was finally taken in the committee of the whole, on the 29th of April, the bill was passed by the casting vote of the chairman, and on the following day the house came to the same decision, by a vote of fifty-one to forty-eight.

In the debates of this session, Mr. Smith took a

[1] Alexander Hamilton.

more active part than at any time before. Those of his speeches[1] that I have seen, are, what they purport to be, discussions, in which facts and principles are brought to bear, with great force, on particular subjects, under particular circumstances, and generally with reference to particular men. They are remarkable for the skill with which everything adventitious is set aside, and the subject held up in its naked simplicity. With most of them the interest, when they were delivered, must have been greatly increased by the good-humored, but sometimes exceedingly severe personal thrusts, dealt, as it were, in sport, while, without turning to the right hand or to the left, the speaker goes steadily forward to the complete elucidation of the subject. Their merit, like that of a judicial decision, consists in the force of the whole; parts cannot be given as samples; and, unlike a legal opinion, they are to be viewed not only with reference to the exact nature and bearings of the question, and the facts connected with it, but with a full understanding of the position of individuals, and the circumstances connected with each particular stage of the discussion. In the latter part of his life, Mr. Smith himself attached little value to them. But in them he showed himself a skilful debater, and an able defender of Washington's administration.

The following extracts from letters will show what were his feelings, and may serve also as a running

[1] Mr. Webster has said of his speeches that they are excellent; especially some of them on constitutional points. His speech on the British treaty the 16th March, for instance, may be commended as a clear, direct, strong, judicial statement of a constitutional argument.

commentary on the events of the day. During the previous session, his letters had been almost desponding. But now, in the heart of the conflict, though himself, on a subject which he considered of such vital consequence, in a small minority, his letters were full not only of hope, but of a boyish glee; hardly in a single instance, till after the contest was successfully ended, did they exhibit anything of doubt or gloom. He was not a man to be cowed down by what seemed an overwhelming opposition. So that he could but meet them fairly, his strength and courage were only roused by difficulties and dangers. Through life this sportiveness under circumstances which filled others with apprehension and gloom, was a marked feature in his character, and bore him up, when otherwise he must have sunk by the way.

To John Smith, 12th December, 1795. "It is now a week since I arrived at this place, (Philadelphia.) I am still very much of an invalid, my cold, as was to be expected, rather increased than diminished on the journey. I am taking every precaution to prevent its continuance, and hope in a few days to be able to give a good account of it. I called on my friend Ames, and spent a night at his house. I think he is on the mending hand, but his recovery will be but slow, and he will not be able to give his attendance here till towards spring, if at all. We have scarcely entered on business. The president's speech I enclose. You will see that he treads lightly on the treaty. It is difficult to see *how* we can find an opportunity to abuse him in our answer, but, as I believe a majority of our house are in the opposition,

it is more than probable that some censure will be mingled in our answer. Not a word as to Mr. Randolph. His affairs seem still enveloped in mystery. When the curtain shall be drawn, which is to disclose the hidden things of darkness, is altogether uncertain. I am not so agreeably circumstanced as to company, as last winter. I miss my friend Ames very much."

To the Hon. John Taylor Gilman,[1] 16th December, 1795. "Dear sir: I have just read your address to the legislature at the opening of the present session, and cannot deny myself the pleasure of assuring you that it has given me the highest satisfaction. That the federal government is a foreign one, that its administrators and its measures are to be viewed through the medium of apprehension and jealousy, are sentiments cherished by many in high office in some of the states. They are sentiments no less false than pernicious. From this cause, it has happened that scarce a measure of the general government has escaped censure, and the most virulent and unprovoked abuse has been levelled against every man actively concerned in its administration. The honest and patriotic have experienced what the guilty and corrupt alone could merit. When faction has been considered as the surest test of patriotism, and calumny as the proper reward for faithful services, it requires

[1] A man whose sound judgment and uprightness were alike honorable to himself and to the people of the state, who, in fourteen different elections, chose him for their governor. "He furnished," said Judge Smith, "a living proof that firmness and independence of mind, joined with integrity and talents, *may* be popular. Yet he was not in the habit of addressing himself to popular passions and popular prejudices."

but little political sagacity to foresee what kind of pilots we shall soon have at the helm of our political ship. In every society there are men, — the virtuous, the industrious, and the good, — (in this country they are a great majority,) who are interested in the preservation of order and good government. It is a vain expectation that society is, or ever will be, composed of no other descriptions of character; there will always be drones in every hive, and there will always be ambitious men desirous of climbing up the ladder of political power and eminence; there will always be popular topics to catch the giddy and unthinking. It will always be the duty of good men, and especially of those who share largely in the confidence of their fellow-citizens, by a manly and explicit avowal of their sentiments on all proper occasions, to counteract the views of the enemies of our public peace. I am persuaded that the present crisis demands such a line of conduct; I am pleased that you have adopted it. I am persuaded if your example were followed in the different states, the effects would be the most favorable that can be imagined. The confidence which you express in the president, Mr. Jay and the senate, is, I am confident, deserved. It is totally different from implicit faith, and blind obedience to persons in power; and were I to look for these last qualities, base and abject as they are, I should expect to find them, not among the men who bestow a just confidence where it is justly due, but among the false patriots and demagogues of the present day. The answer of your house of representatives, as it evinces a unanimous concurrence in the

sentiments advanced by you, must be flattering and gratifying in the highest degree. That the state I have the honor to represent should, on this occasion, so honorably distinguish themselves, as the friends of rational liberty, good order and good government, affords me a satisfaction which I can find no words to express. There surely can be nothing more agreeable than to find that one's sentiments are in perfect harmony with that of the people at large. Mr. R.'s long-expected vindication is at length promised for Friday next. Little doubt seems to be entertained of his having been improperly wrought upon by Fauchet. It will not be easily credited that Mr. R. is the first on whom attempts have been made by our virtuous sister."

To John Smith, 29th January, 1796. "We have not passed a single bill, and have been in session eight weeks. I do not think that this is against us; we are maturing business. If the state legislatures should, in this respect, imitate us, it would be better. Not so many of your bills at the last session would have been negatived. The great danger is, *that we legislate too much*. There is some business of considerable importance under deliberation, and I think the session will not terminate before the latter end of April. I do not think much mischief will be done. There will be an attack, we are told, on the treaty, when it is laid before us; and we expect in a few days to commence a discussion on the propriety of giving more encouragement to our own shipping. As this will be at the expense of the agriculture of the country, I shall oppose it. I like the independ-

ence of Governor Gilman, and think it will eventually operate in his favor. Perhaps the bill he objected to was a good one, but still, I believe he acted uprightly, and therefore I approve of his conduct. I write this in the midst of a debate on the question, whether we should employ a stenographer, or short-hand writer, to take down the debates of the house."

To the Hon. Fisher Ames, 14th January, 1796. "As to your inquiries about Randolph's connexion with Fauchet, how far it went I am altogether ignorant. The despatches No. 11, &c., luckily for the parties, have not been intercepted. If Randolph has not, since October, '94, 'touched something real,' it must have arisen from the cause mentioned by the Citizen, and which he seems to regret exceedingly, namely, that he had no cash, more than sufficient for himself; and though our allies are vastly civil, in leading their friends to some very pretty amusement, such as a little exercise at the guillotine, and a short sail in a drowning boat, where ladies are concerned, yet I have always observed, that when money is concerned, they are very apt, clownish as it is, to help themselves first. He put him off, the first time, with the old story of the pure morals of his nation, but it is not to be presumed that Randolph would be fobbed off so. Besides, I think the Citizen, with all that impudence for which his nation is so remarkable, and of which he was the fit representative, would not think of passing the same stale trick twice upon our worthy secretary."

Mr. Ames, on account of his feeble health, was

not able to take his seat in congress till the 9th of February. Till then there was a very frequent correspondence between him and Mr. Smith, who kept him informed of the proceedings at the seat of government. This correspondence, with the exception of three or four letters from Mr. Ames, and two or three fragments from Mr. Smith, I have not been able to find.

From the Hon. Fisher Ames, Dedham, January 18, 1796. "My dear friend: You have deserved well of the country for writing so punctually, and so fully, so wittily, and so wisely. I am glad you abstain from scandal, because you know I hate it. Yet abuse Mr. Thacher, if you please, for his not writing to me, and I shall esteem the favor in proportion to your known repugnance to the task. I think spiritedly, and almost resolve to go on to Philadelphia. Should this snow last, I am half resolved to jingle my bells as far as Springfield, within a week. That, however, is a crude purpose, ripening in my brain. To-morrow I go to my loyal town of Boston, in my covered sleigh, by way of experiment of my strength, which will prove just nothing, as it is no exercise. More of this, and more decidedly, in my next. I am, I believe, unfit for any fatigue, or for business. I go with a fixed design to be useless. Does that surprise you?

"I have read two Camilluses, on the constitutionality of the treaty; so much answer to so little weight of objection, is odds. He holds up the ægis against a wooden sword. Jove's eagle holds his bolts in his talons and hurls them, not at the Titans, but at

sparrows and mice. I despise those objections, in which blockheads only are sincere.

"Our governor[1] has not yet delivered his most democratic speech, although it is the second week of the court sitting. To-morrow wisdom opens her mouth. It is said he has twice or thrice new-modelled his preachment, as he was led by hopes and fears of the temper of the members, finding no anti-treaty stuff would be well received, it is to be supposed. So says rumor. Your despatches are referred to a committee of the whole, and if any part shall be found to demand a more detailed answer, it shall be sent by the next post. Whether you *did* play the fool or not, when the flag was delivered, you *seem* to have done it. Such parade to check enthusiasm! Oh stuff! Is it necessary to show zeal for the power of France, to evince regard for liberty? You remark, justly, 'Reason is a slim underpinning for government.' But our reason is no less wild than our passions. Our very wise folks think a man false to his own country, if he is not a partisan of some foreign nation. Your friend, F. A."

From the same: Springfield, Jan. 29, 1796, Friday. "I pray you look out lodgings, such as will suit my invalid condition. If I might choose, I would prefer a place where only you and I could be received; that is not material. How would it agree with your taste to have our two beds in one chamber, where a fire might be, every evening, if desired; and the other a drawing-room? This thought has not lain

[1] Samuel Adams.

long ripening, and may be met by your objections; it shall not be allowed to contend against them. Mrs. Ames relies upon your friendship to keep the talking bullies off, whose noise and perseverance would waste my strength as well as patience. My organs are sound, but I am yet weak, and five minutes undue exertion will overthrow me for a whole day. This makes it absolutely necessary to secure a place of repose, and to persist in a plan of great carefulness and abstemiousness. I shall hire my speeches made and delivered. Bradley went home, in 1794, reporting through the country that the printed speeches were known to be made by Englishmen, who had come over to work in that way, some at five guineas a speech, some as high as ten. But a speech could be bespoke and printed, at almost any price."

From the same. "Mamaronuk, at Mrs. Horton's, twenty-seven miles east from New York, Feb. 3, 1796, Wednesday morning. My dear friend: Here I am, per 'varios casus,' through thick and thin; 'jactatus et terris;' the sleigh often on bare ground; vi superum, and then there was great wear and tear of horse-flesh; tantæne animis, iræ, such is my patriotic zeal to be useless in congress. I give you a translation to save you trouble; and I have the *most intimate persuasion* that it is as near the original as the copies of Mr. Fauchet's despatches, No. 3 and 6. I left Springfield Saturday morning, and came on to Hartford, very sick all the way. But I assure you solemnly, I survived it, and was well the next morning. Lodged at New Haven Sunday night, at Norwalk Monday night. The snow grew thin at New

Haven, and was nearly gone in the cart-way at Stamford. There I procured a coachee from a Mr. Jarvis, who was very obliging, and no democrat, his name notwithstanding. Came on wheels to this place, and slept; waked, and found a snow-storm pelting the windows. It still continues, and I have sent back the coachee sixteen miles to Mr. Jarvis, and wait for the sleigh. Fate, perhaps, ordains that it will thaw by the time it comes back; so much uncertainty is there, in all the plans of man! The novelty of this grave reflection will recommend it to you. To-morrow expect to hear the bells ring, and the light-horse blow their trumpets on my reaching New York. If Gov. Jay will not do that for me, let him get his treaty defended by Camillus and such understrappers. I intend to pass two days there, and three more will, I trust, set me down in Philadelphia. Do not let me go down to the pit of the Indian Queen. It is Hades, and Tartarus, and Periphlegethon, Cocytus, and Styx, where it would be a pity to bring all the piety and learning that he must have, who knows the aforesaid infernal names. Pray leave word at the said Queen, or, if need be, at any other Queen's, where I may unpack my weary household gods. I am the better for the journey, although I have at least three times been so ill as to come near fainting. My country's good alone could draw a man so sick from home — saving that I am not sick, and shall do my country no good. That, however, is not allowed by counsel to impair the obligation to pay me six dollars per day. Forbearing to be mischievous, is said to be a valid consideration. I shall not prove a trou-

blesome lodger, nor call for little messes; a slice of dry bread at noon, wine-whey frequently at bed-time, will be all the addenda to the common attendance. Your offer to lodge with me in the same house is really very friendly, as you might well expect to find me both stupid and hyp'd. If I should prove otherwise and better, it will be a just reward for your generous friendship. Yours."

To Mr. Ames, 6th February, 1796. "You say you will play orator Mum, in congress. You shall be *permitted* to play no other part by me, because it will injure your health; and by my friend Harper, because he talks all the time himself; by the jacobins, because they never liked your speaking; and by all your friends, because they wish you 'to live to speak another day;' and, I may add, because there will be no subject worthy of your talents. 'Nec deus intersit nisi vindice nodus.' I ain't sure I have the Latin right. The supreme court are in session, and I am, you know, fond of attending, to learn wisdom. You will therefore be so good as to excuse this very hasty scrawl."

To Samuel Smith, 5th March, 1796. "Mr. Ellsworth, a senator from Connecticut, is appointed chief justice of the United States, and will accept. He is a good man, and a very able one; a man with whom I am very well acquainted, and greatly esteem. The treaty is laid before our house, and probably will be discussed in a few days. The event cannot be conjectured. We have a great many changeable animals; one never knows where to find them. I am very sanguine, however, that all will be well."

To the same, 19th March. "We are engaged in the debate mentioned in my last, as to the powers of the house of representatives, in making treaties. Part of the debates are in the paper enclosed. I will send you, by the next post, my observations on the question, as delivered in the house on the 16th. They appear in to-day's paper. I have taken a more active part in business than formerly, and have been as successful as I had any reason to expect."

To the same, 25th March. "We have had a debate of three weeks, nearly, on the question to call on the president for the papers relative to the treaty with Great Britain. The call is made under an idea that the house of representatives have a right to judge of the merits of the treaty, and, if they do not like it, reject it. Under this idea, we opposed the motion. Yesterday the question was decided — sixty-two for calling on the president for the papers, and thirty-seven against it. I have on this occasion, as on some others this session, taken the liberty to give my sentiments. They are published, but I have not a copy on hand. I shall send you a newspaper containing them, when I can procure one. In some of the papers they are not yet published. Notwithstanding the house determine they have a right to inquire into the merits of the treaty, I yet persuade myself they will (that is, a majority will,) agree to make the necessary provision to carry the treaty into effect."

To the same, 31st March, 1796. "We have received an answer from the president of the United States, to our request of the 24th March, calling on him for his instructions to the minister who negoti-

ated the treaty with Great Britain, and the correspondence and papers relative thereto. He refuses to send the papers. You can scarcely conceive the satisfaction we derive from this determination of the president. He enters somewhat at large into the subject, and refers to the proceedings of the convention who framed the constitution. This is understood as a severe criticism on the conduct of Mr. Madison and Mr. Baldwin, who were both members of that convention, and who must have known that nothing was further from the intentions of the members of that convention, than to give the house of representatives the power in relation to treaties, which a majority of that body *now* claim. Madison's conduct is utterly irreconcilable with an ingenuous and honest mind; and I think his duplicity and insincerity, on this occasion, have given a wound to his character, (I mean his political character,) which no time can heal. The president must be dissatisfied with him. The matter is now before the dread tribunal of the public, and I believe they will determine right. The weather begins to grow warm, and, of course, very uncomfortable. I am afraid we shall have much internal heat as well as external. The Lord have mercy on us! The Virginians threaten us, that, as the president would not give the papers, they will make no provision for executing the treaty. They are capable of almost anything, and I am afraid that a difference between the two houses will prolong the session. The senate will never consent to rise till provision is made to execute all the treaties. The president has this day nominated the commissioners under the treaty."

From the Hon. Christopher Gore, 12th April, 1796. "My dear sir: I am much obliged by your letter of the 2d instant. Ames's health is precious to his friends, and I have no doubt is much increased by your affection and attention. If he could cease to think, he would certainly be a well man. The action of his mind stops that of his body. Your house and the president seem to be at war. I know of no neutrals in this contest. The law of our nation admits of none. The public is much indebted to you and your friends, for placing this question, so as to leave no loopholes for even knaves and hypocrites to creep out. They must assume the right of opposing the constitution, or tread back the false steps they have taken. They are not ingenuous enough for the latter, and I hope they have not impudence enough for the former. In expectation of taking you by the hand shortly, I remain, my dear sir, your affectionate friend, C. G."

To Samuel Smith, 28th April, 1796. "The treaty is still on the anvil, but we expect the question this day, and it is doubtful which way. I am more encouraged this morning than at any former period, that we shall prevail on the *first* vote. At all events the division will be pretty equal, and we shall certainly carry it in time. The sovereign people appear to be very much alarmed. An express arrived yesterday from Boston, in sixty-two hours, with a petition signed by upwards of eleven hundred merchants, traders, and citizens. These things have their effects on weak minds, of which, it must be confessed, a part of our house is composed. I had

intended to have spoken on this question, and was prepared some days ago, but not having an opportunity then, if the question is taken to-day, believe I shall give a silent vote. There have been many speeches made, some of which might as well have been omitted. My mind has been a little agitated lately, by a proposal to go into the treasury department, as comptroller, at a salary of two thousand six hundred and fifty dollars per annum. When I say a proposal, I mean that the thing has been mentioned to me, as what might be obtained. Upon the whole, I rather viewed it as less advantageous than my prospects, considering that one must reside in Philadelphia, and live at great expense, and declined being a candidate. The office in that department is next to the secretary of the treasury, and is the office from which the present secretary came. It is the head of the accounting department, and requires mercantile and legal knowledge. It would be a new path to me, and would derange all my views in life. I have been very happy this winter, in enjoying the esteem and confidence of those whose good opinion is worth regarding, and I am sure have many friends here."

To the same, 29th April. "We have just taken the question on the resolution to appropriate the money necessary to carry the British treaty into effect, in committee of the whole; the members rising in the affirmative forty-nine, the same number in the negative. Muhlenberg, the chairman, wonderful to relate, decided in our favor! He has been a violent anti, but the sovereign people of Philadelphia happen

at this time to be on the right side, a thing which I presume he had no right to expect. It is certainly the first time.

"To-morrow we expect the question by ays and noes in the house. The event is yet doubtful. You perceive that we have been, I may say still are, on the edge of a precipice, ready to take a leap into the abyss of confusion. If we could persuade our brethren of Virginia and North Carolina to take this leap, and they are, in truth, fit for nothing else, our government might jog on for some time. God knows how this ship of ours will sail, when the present pilot quits the helm. If we may judge, from present appearances, she will inevitably founder. I am afraid that we are mistaken, when we place so much reliance on the wisdom of our citizens, to supply the place of power in the government. Has not every citizen good sense enough to know that it is his duty, and certainly it is his interest, to be temperate, sober, and virtuous? And yet how few are there of this character! We have had a thousand escapes, miraculous escapes, since the formation of the present government. We have but just escaped the vortex of European politics, and, on this occasion, we have been within an ace of tarnishing the national character and honor — a stain which all the water in the ocean could never wash out. The present crisis affords the most unequivocal proof that our prejudices are an overmatch for our judgment, our interest, and even our sense of national honor and character.

"My friend Ames, on Thursday, (April 28,) gave

us the most eloquent speech I ever heard. The impression was great; probably much increased by the bodily weakness of the speaker. His introduction was beautiful, and his conclusion divine! His words, like the notes of the dying swan, were sweet and melodious. I tell him that he ought to have died in the fifth act; that he never will have an occasion so glorious; having lost this, he will now be obliged to make his exit like other men. If he had taken my advice, he would have outdone Lord Chatham. I am tired of this cursed treaty; it ruins my temper and spirits."

In another letter Mr. Smith says: "I send you my friend Ames's speech. He was much indisposed, and has been so for a year past, and has taken little active part in business. He spoke without premeditation, and without having intended to speak at all. The effect produced was very great." "When Mr. Ames rose to speak," Mr. Smith used to say, "he was so feeble as to be hardly able to stand, and supported himself by leaning upon his desk. As from the first faint tones he rose to the impassioned outpourings of high sentiment and patriotic zeal, his physical energies increased, till the powers of his body seemed equal to those of his mind. At the close he sunk down, weak and exhausted; 'his mind agitated like the ocean after a storm, and his nerves like the shrouds of a ship torn by the tempest.'" The speech, I am told, was written out from memory by Mr. Dexter and Mr. Smith, and to their labors, corrected by Mr. Ames, we are indebted for the copy we now have, greatly inferior, Mr. Smith always said, to the

speech that was delivered, but with enough of its original fire and lofty enthusiasm, to be still recited and read with feelings produced by no other American speech of the last century, except two or three before the revolution.

To Samuel Smith, 28th April. "I enclose you a copy of a letter written by a son of the Marquis Lafayette. An inquiry was set on foot by E. Livingston, the patriot, with a view, as it was whispered, to disgrace the president. It was known that the young man was in this country, and the attachment of this country to his father was well known. It was circulated, among these devils, that the president took no notice of the lad, because he loved the British and hated the French.[1] The inquiry has proved the falsehood of these insinuations; and the president has on this occasion, as on every other, been found the *good* as well as the great man. The letter of the young Lafayette is well written, and does honor to a youth of fifteen." — "P. S. May 2. We have at length taken the question on appropriating for the British treaty in the house, and have had a complete victory. We carried it fifty-one, besides the speaker, to forty-eight. They endeavored to obtain a sentence of condemnation against the treaty, but could not obtain it. We expect the session will close in three or four weeks. They will probably attempt some other mischief, though God knows what it will be; but I trust they will be disappointed in all their

[1] Any one who reads Washington's letters to Mr. Cabot and others, respecting the young Lafayette (see Sparks's Washington,) will wonder how so impudent a calumny could have been got up.

machinations. The sovereign people are with us; and we are told that in Virginia they are on the right side, and that petitions will flow in from that quarter this week."

To the same, 10th May. "I am anxious to be with you; a session of five or six months becomes very tedious, and especially such an one as this, which agitates all the passions of the human mind. I do not believe that the like will ever happen again. Good men will soon become tired of a government which requires constant propping and shoring up. The action of the sovereign people on the members of our house carried the British treaty. We cannot expect that the people will always be wiser than the government; on this occasion they have been so. We are informed that the people at the northward, roused like a giant refreshed with wine, are fierce for the government."

Early in May Mr. Smith, in company with his friend, Mr. Ames, who made the journey for the benefit of his health, visited at Bethlehem the Society of United Brethren. In a very lively, pleasant letter, giving an account of his visit, to his brother, after describing the other parts of the establishment, he adds: "On Sunday we were conducted by the bishop to the chapel, and were greatly edified by a very long orthodox sermon in the German language. The music we could understand without an interpreter. They had a pretty band — an organ, violins, hautboy, clarinet, &c., and played well. The scene shifted. At twelve o'clock we had a sermon in English. But the best of it was the audience — seventy or eighty

charming, divine little girls, belonging to the boarding school, from Philadelphia, New York, Baltimore, &c., from nine to fifteen, dressed in uniform, and many of them very handsome. You know my passion for these blossoms of innocence and beauty. By the appearance of the company, I thought myself in heaven. I was in love with a dozen of them successively, before the exercises were ended. We visited their chambers. They played on the piano-forte, and sung to us. This, you may say, finished what their eyes began, and did my business completely. I left them with a heavy heart, or to speak more properly, with no heart at all, — vowing that I would and will be married, and with the assistance of the Deity who presides over matrimony, have at least a dozen sweet little girls of my own.

"The discipline of manners and morals which pervades this society, extends to the young ladies of the boarding-school. I never saw so much good order and propriety of behavior in the same number of persons of any age or sex. Do not understand me as approving all the customs of these good people. That is an abominable one, which interposes a barrier between the sexes, and cuts off all intercourse. I have myself derived so much pleasure, and (if you will allow me) I will add, improvement in morals, from the society of the 'last and best of all God's works,' that I can't endure the thought of having the dear creatures shut up and secluded from the world. Don't laugh, but look grave, and I will assure you that in all my castles of happiness, (and I build a great many,) one of this charming sex makes a con-

spicuous figure. I will not inhabit the finest castle that ever my own imagination built, (and I can beat Inigo Jones, and every other architect that ever lived, in the castle building way,) unless she will consent to be the mistress of it.

"I ought not to omit a circumstance which shows the disposition of these good people to keep the sexes apart. In the place where their dead are deposited, they have drawn a line, and are extremely careful not to mingle the bodies of the sexes. I ridiculed this extreme caution in conversing with friend Thomas, and told him that as their people were so very chaste while living, I thought they might be safely trusted when dead. He seemed to think that this was one of the cases in which too much caution could not be used. At the most, it was justifiable on the principles of uniformity.

"Will you be so good as to excuse this long epistle? I could not resist the desire of giving you some account of a visit which has afforded me so much pleasure. I am sensible that my picture falls very short of the things I have attempted to describe, and if you should happen to fall asleep before you get through, I can't help it. Mr. King is this day appointed minister plenipotentiary to the court of London, in the room of Mr. Pinckney, who returns to this country. I have much pleasure in this appointment, because I esteem the man, and am sure he will do honor to our country. I regret that he leaves the senate. I send you Ames's speech; it is much applauded, and thought to be the most popular that ever was delivered in this country. The 25th is the

day of adjournment. I am inclined to believe it will be further protracted, say to the 30th. Adieu, my dear friend."

A wish expressed in this letter was nearer its fulfilment, than the writer at the time could have supposed. The divine woman, mentioned in a letter to Mr. Fletcher, nearly a year and a half before, was Miss Eliza Ross, of a respectable family in Bladensburg, Maryland, who was then boarding with her sick mother in the same house with Mr. Smith. He became exceedingly interested in her, and was pained to learn that she was already engaged. The following fragments, containing the only attempts at poetry that I have found among his writings, may show something of his feelings.

"To Adam, Paradise was given,
Blooming with all that charms the sense:
Of fruits — one only was forbidden,
And that occasioned sore complaints.

How much severer is my fate
Than his! unjust! how could *he* grieve?
He was denied the precious fruit,
But I, alas! deprived of Eve.

Nay more, severer still my case,
A double pain, without alloy;
The fruit that I 'm forbid to taste,
Another freely may enjoy." J. S.

December 17, 1794.

To Delia, 23d December, 1794. "It would be affectation in my charming girl to pretend that she did not understand what would have been my wish, in case I had dared to express it, in the conversation

at the tea-table. Mrs. R. chose wealth. My wish comprehends everything. Is it wrong, Delia, to wish for what we never can possess? If it is, I am guilty; chide me like a sister. I have always told you that you would find me a very bad brother. There is a difference between hopes and wishes. Hopes I have none. Chide me too, for the following lines. They have no pretension to poetical merit. They are almost an impromptu. They have in short nothing to recommend them, except that they come from a heart too much Delia's to be anything but truth and sincerity.

THE WISH, OR PETITION.

"If Jove should condescend to grant
What *he* could *spare*, and *I* most *want*,
Think you I'd ask for wealth or fame,
The world's applause, a hero's name,
Or, what is still to be preferred
By virtuous minds, with wisdom stor'd,
Some friends to cheer in ev'ry trouble,
My griefs to halve, my joys to double,
A troop of friends to gild my days
With pleasure, happiness and ease?
One single boon I'd ask great Jove:
Incline my Delia's heart to love;
All my ambition, wealth and fame,
Are center'd in her charming name:
My wishes then are gratified;
To me what is the world beside?
He who has Delia's rich to excess;
The world when taken from his store,
Can never make his wealth the less,
When added — still he has no more.

Tuesday evening, December 23, 1794. J. S.

These and other expressions of yet more ardent admiration, devotedness and affection, such as might

overwhelm with confusion any but a lady educated in the school of Sir Charles Grandison and Lady Harriet, were answered firmly, but always with delicacy and tenderness. The correspondence, as between brother and sister, was kept up through the winter by him with the most passionate zeal; but on his return to New Hampshire gradually died out. In the mean time she had returned to Bladensburg, and either through her lover's unworthiness or a change in her own affections, found herself freed from her former engagement. About the middle of May, Miss Ross came to Philadelphia, and in a few days wrote to Mr. Smith a note, in which, after speaking of her mother's feeble health, she says, "My sister will leave me in a day or two; I have very few acquaintances, and this is the time when the company of a friend would be most agreeable. In you I expect that friend. I read over your letters in which you promise me your esteem forever. I will not, cannot, for a moment, think I have lost it, when to retain my own has cost me so much unhappiness." They met, and understood each other. It is not worth the while to be more particular, or to quote more largely from letters written with reference to the most delicate and sacred of human relations. Mr. Smith, near the close of his life, had his correspondence with her bound in a volume, which he thus very justly described: "These letters show real fervor and attachment, and marks both of strong affection and passion; but they are little suited to the general eye. It is the tendency of all strong feeling, from dwelling constantly on the same idea, to be monotonous; and

those often-repeated vows and verbal endearments, which make the charm of true love-letters to the parties concerned, make them cloying to others."

At the close of the session, Mr. Ames proposed to Mr. Smith to join him in an excursion to Virginia, but he felt obliged to decline the proposal and return home. He arrived at Amherst, New Hampshire, the 11th of June, and, on the following Wednesday, "the honorable judges of the court of common pleas, then sitting in this town, the gentlemen of the bar, the grand jury, and a number of respectable citizens of this and the neighboring towns, met at the hall of Dr. Samuel Curtis, and presented the following address:[1] 'It is with singular pleasure we congratulate you on your return from our national councils. Language can hardly express the satisfaction we feel in the part you have taken. When our peace, happiness and prosperity were at hazard; when our national honor was tottering, and in immediate danger of being sacrificed; when discord, anarchy, and war, with all their horrors, were entering upon the peaceful borders of America, — your patriotic exertions were not wanting to rescue her from a situation so humiliating, so ruinous, so distressing. Accept, sir, our most cordial thanks. Long may you participate in that happiness, so honorably and substantially secured to your fellow-citizens.'"

To this address he replied in a few words, expressing his gratification that the course which his own

[1] Village Messenger, (Amherst,) June 21, 1796.

judgment and conscience had recommended should meet the approbation of his friends. "Hilarity," the account continues, "with order, eminently distinguished the evening, and the whole concluded with the most perfect harmony and satisfaction."

Mr. Smith's account of this matter is given in a letter to Miss Ross, dated 26th July, 1796. "Yesterday I visited some of my friends in a neighboring town, and received many compliments for my political conduct the last session. I omitted, I believe, in my former letters to tell you that on my arrival at Amherst, (not far from where I live,) a farce of the same kind was acted in public by the court, the bar, and some of the principal inhabitants of the county, in which your friend played harlequin. If I could have found any window to jump out at, I believe I should have ventured. I am but an indifferent actor at the best; was not fond of the play, and have no ambition to play the principal part. I don't pretend to be indifferent to public opinion. He must be a bad man, who does not wish for the praises of the good; but this I can say with the strictest truth, that I should prefer an address from my Eliza, approving of me in my private character, to one from the whole state of New Hampshire, approving my political conduct. I can be happy without the one; I should be miserable without the other. Eliza, I am tired of political life, and wish to quit it."

The allusion in the newspaper account to the order and harmony of the meeting was not, perhaps, so unnecessary as one might suppose What follows was written from the same place, in a private letter

to Mr. Smith, by a prominent lawyer, three months before; and, after making all the allowances we can for humor and imagination, it certainly leaves behind an impression, anything but favorable to the character of the bar for temperance. "I will write about the court and bar; and firstly of the court. Judge —— wore a new wig, alias a *scratch*, which was, upon the whole, tolerably ridiculous, especially as it was frequently made to change its position, to our no small amusement. As to the rest, I will *say nothing*. Gordon had the bar to dine with him on Thursday, and it happened that I had previously asked the judges to dine with me, and therefore missed of much pleasure as well as wine, that I should have enjoyed at his house. He endeavored to get all his brethren drunk, and, it not being a very difficult undertaking, he succeeded very well with respect to them and himself too. About half-past three in came the whole fraternity, with Judge D. at their head, who was the soberest man among them, (what think you of the others?) ready to give the fraternal hug even to old K. himself. D. *goggled* to the court. A. and S. were silent for the best of reasons; they could not speak. C. and W. quarrelled, and threatened to fight. Gordon laughed at everything and everybody. B. and S. D. Jr., argued a case, to the great satisfaction of themselves. Clagett fell asleep, and Ben Champney made poetry. N. G. stole a few writs, and Thompson made up his *large bills* of costs. Old K. broke all his deputy-sheriffs, and took care of the jury himself, to save the fees."

The summer and autumn of 1796 were spent by Mr. Smith, as he had before spent the intervals between the sessions of congress, attending the Hillsborough courts, and making his home at his father's, where he lived in the most simple manner, and at very small expense. The great object of interest at Philadelphia during the session of 1796 and 1797, was the retirement of Washington, and the election of his successor. Some little idea of what engaged Mr. Smith's thoughts, may be gained from the following extracts.

To Samuel Smith, 4th December, 1796. "I arrived here two days ago, in very good health. The weather was very cold, but, contrary to my usual experience, I suffered little on that account. As to lodgings, I am not so happy. My old friend Ames lives with a gentleman in this city as a guest, not as a boarder; consequently I shall be deprived of his society as an inmate, and I have found him the most agreeable companion. I have just received a letter from my Dulcinea, and I am all impatience to visit her. I think I shall set out some time the latter end of this week. All the talk of this city is about Citizen Adet, and the election of president. These subjects are indeed connected, as nothing can be more evident than that our sister, the French republic, interests herself very much in the question. She wishes we may have a good one, fears our discretion or capacity to make a suitable choice, and kindly uses every effort, that Mr. Jefferson may be the man. I spent last evening with Mr. Adams; he has been most scandalously vilified in the public papers, and

though he is a philosopher, yet he has so much of the man about him, that I think he feels sore, and will be sorer still, if Jefferson reaches the goal before him. I think Adams's chance the best, still it is but *a chance.* We are anxious and distracted with apprehensions. I hope all will be well."

To Miss E. Ross, 4th December, 1796. "I left Boston 22d November, with my friend, Mr. Thacher, an odd mortal you have seen at Mrs. Ramsey's. On the road to Springfield, (one hundred miles,) fortune, to make amends for the badness of the weather, treated us with a succession of incidents, which made the journey extremely pleasant. At Springfield the scene shifted, but our good fortune still continued. Dr. Ames [1] and Mr. Foster were my only company to New York. As we were in a close carriage, we suffered little from the unusual coldness of the season. I need not say the journey was amusing. The goddess, as if determined to acquire a character for constancy and stability, increased our pleasures at the same time that she increased the number of our company from New York to Philadelphia. The journey, independent of the idea that every day brought me nearer to you, was exceedingly pleasant."

To Samuel Smith, 7th December, 1796. "I enclose you the president's speech, delivered to-day in the house of representatives, to a very crowded audience. The idea, that we shall see his face no more in that place, threw a solemnity, and even sadness, into every countenance. He appeared to be

[1] Fisher Ames, LL.D., and the Hon. Dwight Foster.

affected with it himself, and discovered an unusual degree of sensibility. For a few moments, faction, jacobinism, and French politics, seemed to hide their heads, and I believe I may venture to say, we all felt as Americans ought to feel."

To Miss E. Ross, 7th Dec. 1796, Wednesday. "The weather is threatening, but I have determined to set out on Saturday. On Sunday I am promised to reach Baltimore. Monday evening I invite myself to drink tea with you. To-day we had the president's speech. The idea that 'we shall see his face no more' mingled itself with the business of the day, and threw a solemnity and sadness over the scene. Jacobinism, faction, and French politics were for a moment hushed; and I am confident, while the speech was delivering, the whole house felt as Americans should feel,—all gratitude to Heaven for raising up this wonderful man for our deliverance, and grieved to see him about to retire from the helm. Excuse this political effusion. When we have nothing else to say, I will talk politics with you at B. Till Monday eve, adieu; may Heaven bless my Eliza with the accomplishment of all her wishes."

To Miss E. Ross. "What a blockhead is —— to be learning Italian when he ought to be learning English, as you well observe, or laboring to retrieve his affairs, and pay his honest creditors. This desire to get a smattering of a great many things, and nothing perfect, is very ridiculous. I was pleased with an observation of Mrs. Washington's, which was very severe, without any intention of being so on the part of the old lady. Mrs. S. was saying, that she had

such a master, and such another, to teach her daughter this language and that; to play on various instruments, and, in short, you would suppose that she was to be complete mistress of the whole circle of science. Mrs. W. replied, that it had been her endeavor to have Nelly taught but few things, so that she might stand the better chance to excel in anything; that she thought it quite enough for a lady to play on one instrument, and that it was very seldom they played tolerably on any."

To Samuel Smith, 28th Jan. 1797. "Since I wrote you last, a melancholy event has taken place. The dwelling-house of Mr. Andrew Brown, printer of the Philadelphia Gazette, (in which was his printing-office,) was yesterday morning discovered to be on fire. Every exertion was made to save it, and the exertions so far succeeded, that the printing-office received no damage, and the dwelling-house but little. The calamity fell on the inhabitants. Mrs. B. and the three children were suffocated, and expired immediately. Mr. B., in endeavoring to save them, was so dreadfully burnt, that he died this morning. Thus the whole family have fallen victims to the devouring element. What a sad reverse of fortune! They had risen from want to a state of great affluence, in a very few years; and Mr. B. intended soon to leave off business. The number of accidents by fire are very great. It seems as if Heaven in wrath had doomed mankind to destruction, and the French in Europe, and the fire in this country, were the instruments of his vengeance. I feel a thing of this kind with unusual interest, considering how you are

circumstanced. I have just heard that Judge Farrar has resigned his seat on the bench. How has this happened? It will puzzle the governor and council to put in so good a man."

To the same, 31st Jan. 1797. "I now inclose a copy of the president's message on French affairs, with the papers accompanying. When the remainder of this interesting paper comes from the press, I will forward it. This publication will, I am confident, have good effects. It will serve to place in the true point the conduct and views of the French government towards this country, and it must, I think, completely vindicate our government against the charges of M. Adet and his venal tools. It will promote American feelings, which are much needed, and increase real patriotism, which, after all, is rather a scarce virtue, and is generally, like true religion, at the lowest ebb, when there is the most noise about it. Our Palinurus is about to quit the helm; still I think he will be useful to us. He has left behind some excellent instructions, and a chart of the rocks and quicksands on our coasts. I hope we shall have the wisdom to profit from his experience, and, though the war in Europe will probably continue through this year, we shall steer our little bark safely through the storm of European war and European madmen. We shall be injured, but not destroyed."

To Miss E. Ross, 6th Feb. 1797. "I spent yesterday in a manner which I am sure my Eliza would approve. It was a delightful day, and I accepted an invitation from my friend Mr. Ames, to ride with Mr. Rundle and him. Mr. R. is polite enough to

offer me his horses at any time, and I shall certainly avail myself of his very friendly offer. I dined with them *en famille.* It was domestic and charming. In the afternoon and evening we had the greatest variety imaginable. We spent a few minutes with Dr. Priestley, and talked divinity; with the vice-president and judges of the supreme court, and talked politics; drank tea with Mrs. Liston, and talked scandal and treason; and the remainder of the evening at Mr. Wolcott's, and had a very friendly chit-chat, *a la mode New England.*"

To the same, Feb. 8th, 1797, Wednesday, P. M. "I am just returned from the hall. We have had a splendid exhibition. The two houses assembled in the chamber of the house of representatives, to attend the opening and examining the votes for president and vice-president. The result has been long since known. Mr. Adams, as president of the senate, made the declaration that John Adams was chosen president, and Thomas Jefferson vice-president. There was a great concourse of people, and a very brilliant circle of ladies. Being near-sighted, I received no injury from the great display of female charms on the occasion, but came away with a heart just as whole as I went. The only thing remarkable in the ceremony of the day, and what we did not expect, was the concluding scene, which consisted of a short prayer, *a la mode New England,* by Mr. Adams. We were struck with amazement, and some of your southern gentry prayed, who never prayed before."

To Samuel Smith, 11th Feb. 1797. "I write

three times a week to B., and regularly three times a week receive answers. These form my principal happiness. I can hardly persuade myself, I am within four weeks of matrimony. I thank you for the good wishes expressed in your last letter for my happiness. I have no doubt but that I shall be as happy as it is possible for man to be with an amiable wife. I am heartily tired of Philadelphia; the time seems long, and I do not enjoy so good health as at the beginning of the session. I ascribe it to the want of exercise and free living. My wishes are never to attend another session."

To Miss E. Ross, Feb. 22d. "It is now eleven o'clock, and I am just returned from the ball. There were assembled at Ricket's amphitheatre about five hundred ladies and a greater number of gentlemen. The ladies were very elegantly dressed. I thought there was more variety than I have before seen in the dresses. This is a proof that they have made some progress in taste, if the dresses are becoming, and suit the person, complexion, &c. The president and Mrs. W. were in very good spirits, and, I am persuaded, have not spent so agreeable an evening for a long time. Every countenance bespoke pleasure and approbation. Even democrats forgot for a moment their enmity, and seemed to join heartily in the festivity of the day. My heart, I assure you, my love, was in no danger from the constellation of beauty and elegance, which the female actors on this showy stage exhibited. I did not think I could be so indifferent to beauty."

To S. Smith, 23d Feb. 1797. "Yesterday was

the anniversary of the president's birth-day. It was celebrated with unusual show. The political sun of the greatest and best of men is setting with a splendor the world never witnessed before. The highest respect was paid him by all classes, from the president elect to the scavenger in the streets, with a very few exceptions of the partisans of France and anarchy. The evening exhibition was brilliant indeed. The largest number of well-dressed people of both sexes I ever saw, assembled at the ball; every face wore the appearance of joy, and, most of all, that of the president himself. He is throwing off a load, which will, I fear, prove too heavy for his successor."

A day or two before the close of the session, without waiting to witness the inauguration of the new president, and the sublime spectacle of Washington casting off the cares of public life, Mr. Smith set out for Maryland, where, on the 8th of March, he was married to Miss Eliza Ross. Her father, Alexander Ross, a sensible, energetic man, Scotch by birth, had died before Mr. Smith's acquaintance with the family, and her mother, Ariana Brice, from one of the best families in Maryland, was a woman of a reasoning and philosophic turn of mind. Mrs. Smith is said to have been a remarkably pretty young lady; but her beauty was of that delicate kind so easily lost by ill health, and the rearing of a family. Her manners were graceful. The prudence and good sense, which her lover so frequently spoke of in his letters, as well as her attachment to him, and all the duties of her home, continued unabated to the end. They began with warm mutual affections, and with

simple unambitious views, and found more than they had hoped. Her great difficulty in housekeeping arose from the difference between the circumstances of her early education at the south, and her duties at the north. She had been brought up in the midst of slavery, with the habits growing out of it; and during the thirty years she remained in New England, without once visiting her former home, she could not so assimilate herself to the New England modes of thought and life, as to feel perfectly at ease.

The following is from a letter written by Mr. Smith to his brother, two days after his marriage: March 10th, 1797. "I am set down to write, and can truly say I never in my life was so much puzzled about the manner. I want to tell you that I am married, and consequently a happy man. But as the subject is perfectly new to me, and *happiness* no great clarifier of the brain, I foresee that I shall acquit myself badly. What if we should suppose the information *given*, and I should content myself with mentioning only the time, place, &c. Wednesday evening was the time, and, as our dear mother is circumstanced, the family and those immediately connected with them, were the only witnesses of the solemn act, which I consider as the most happy of my life. I have every reason to be pleased with the behavior of my new friends and relations. I forgot to mention that three miles before I reached Bladensburg, I had the misfortune to lose my trunk, with all my clothes, of the value of two hundred dollars. The fastening untied, and some very great knaves

happening to live in the vicinity, picked it up before the stage-driver returned to look for it, which was in less than fifteen minutes. This is the conjecture. I have offered a reward for it, but have not as yet had any success, and begin to despair of recovering it. It has subjected me to much inconvenience, as well as a pretty heavy loss. I saved nothing but my travelling clothes. This loss could not have happened at a more unseasonable time. Luckily I had no money in it, and unluckily, very little anywhere else."

The accident[1] occurring at such a time, was very severely felt. Among the articles lost was a pearl-colored coat, about which he had had a long correspondence with Miss Ross, who insisted upon it as essential to his wedding dress. He found great difficulty in procuring it, and asked whether, if obliged to appear in a more sombre dress, he might not make up for what was wanting, by simpering all the time during the ceremony. But the lady was too much in earnest to be put off so, and after diligent

[1] Those who are curious in such matters, may be interested to see what were the articles of a gentleman's travelling wardrobe, under such circumstances. "A light-colored broadcloth coat, with pearl buttons. Breeches of the same cloth. Ditto black satin. Vest, swansdown, buff striped. Ditto, moleskin, chequer figure. Ditto, satin figured. Ditto, Marseilles, white. Ditto, muslinet figured. Under vest faced with red cassimere. Two ditto flannel. One pair of flannel drawers. One ditto cotton ditto. One pair black patent silk hose. One ditto white ditto. One ditto striped ditto. Ten or a dozen white silk hose. Three pair of cotton hose. Four pair of gauze ditto. A towel. Six shirts. Twelve neck handkerchiefs. Six pocket handkerchiefs, one of them a bandanna. A chintz dressing gown. A pair of silk gloves. Ditto, old kid ditto."

search the coat was found, to furnish another illustration of the vanity of human wishes.

In a letter to his brother, dated 17th March, 1797, Mr. Smith says: "I saw General Washington, as he passed through this town, on his way to Mount Vernon, two days ago, and spent a pleasant hour with him alone. He was undisguised in his sentiments of men and things, and, for the first time in my life, I conversed with perfect freedom with the greatest and best of men."

A few weeks after this Mr. Smith visited Washington at Mount Vernon. He arrived there late in the afternoon, and received a most cordial welcome from Washington and his lady, the latter, "at this time," he said, "a squab figure, without any pretension to beauty, but a good motherly sort of woman." After a cup of excellent tea, &c. the evening passed in conversation. There were present, besides the family, a son of Lafayette, and another French gentleman. While they were talking, a servant came into the room and said to Washington, "John would like the newspaper, sir." He replied, "you may take it," but after he had gone out, said, "he had better mind his work." He then told Mr. Smith a story of his coachman, a long-tried and faithful man. One very rainy day he was obliged to order his carriage unexpectedly, to go a long distance on business. After getting into it he perceived that there was some delay about starting, and putting his head out, he saw that there was a great bustle among his servants, who were trying to mount the coachman on the box, and with much difficulty, at length succeeded.

"What is the matter?" asked the general. The servants replied, that he was intoxicated; "whereupon," said Washington to Mr. Smith, "I was tempted to say to the man at once, be gone about your business. But the coachman at that moment turned round and said, 'never fear, massa, I'll drive you safe.' And I trusted him," continued Washington, "and he never drove better."

At about half past nine, Mr. Smith signified his intention of retiring, when Washington also arose, and taking a lamp, led the way to a most comfortable apartment, in which was a fire brightly blazing. He assured his guest, that the fire would be "perfectly safe," and intimated that he might "like to keep his lamp burning through the night." In the morning, after breakfast, Mr. Smith took leave, though desired to prolong his visit; and a very urgent invitation was given, that he should "bring his bride to see them." Horses were brought to the door, and Washington accompanied him some miles on the way. "He was always," said Mr. Smith, "dignified, and one stood a little in awe of him."[1]

[1] This account was kindly furnished me by a lady, who wrote it down the evening after she heard it from Judge Smith. The following anecdote, I believe, rests on unquestioned authority. It was told to Mr. Mason by the Hon. Joseph Lewis, who was for thirty years a member of congress, and was called by Mr. Jefferson, "the residuary legatee of federalism in Virginia." Judge Marshall and Judge Washington were on their way to Mount Vernon, attended by a servant who had the charge of a large portmanteau containing their clothes. At their last stopping place there happened to be a Scotch pedlar, with a pack of goods which resembled their portmanteau. The roads were very dusty, and a little before reaching the general's, they, thinking it hardly respectful to present themselves as they were, stopped in a neighboring wood to change their clothes. The colored man got down his portmanteau, and just as

This was the last time that Mr. Smith met Washington, but he continued through life to cherish towards him feelings such as he had for no other human being. He pronounced a eulogy upon him at his death ; and one of his last compositions was a lecture on his private character. It was delightful to witness the veneration, amounting almost to reverence, which he uniformly expressed, mingled, as the feeling always was, with the sentiment of religious gratitude, as if by the especial hand of God, he had been raised up for his country's good. And all, who follow with deep interest the history of our country step by step through the war, and the greater perils that succeeded when the war was over, must with devout joy and thanksgiving recognize the influence of the great man, whose character rises so high, and with each coming generation, will rise so much higher, not only above all others with whom he was connected, but above his own position as the head and father of a great nation, — outshining even the splendor of his actions and his fame. His greatness

they had prepared themselves for the new garments, out flew some fancy soap and various other articles belonging to the pedlar, whose goods had been brought on instead of their own. They were so struck by the consternation of their servant, and the ludicrousness of their own position, being there naked, that they burst into loud and repeated shouts of laughter. Washington, who happened to be out upon his grounds near by, heard the noise, and came to see what might be the occasion of it, when, finding his friends in that strange plight, he was so overcome with laughter, that he actually rolled upon the ground.

Judge Marshall told the Hon. Benjamin Watkins Leigh, within three months of his death, that he was never free from restraint in Washington's presence — never felt quite at ease, such was Washington's stateliness and dignity.

was not dependent upon circumstances. It was not Trenton, nor Yorktown, nor the successful termination of a seven years' war, nor the chief command in a righteous cause, nor the highest station in the land, that made him illustrious. Other men have been dwarfed by their own achievements, and, on approaching them, we are saddened and disappointed to see the *man* dwindling away before the magnificent associations that history has gathered round them, as when, in disinterring from a pyramid of Egypt the dusty remains of an ancient king, we are pained by the contrast between the grandeur of the monument and the meanness of him by whom it was erected. But Washington can suffer by no such comparison. Through whatever avenue of illustrious deeds and high associations he is approached, we lose nothing of our admiration and respect for him. Great as were his office, his actions, and his mission upon the earth, the man towers always above them all. In his presence we are impressed only by himself. Such power has a really great and good man, over all the circumstances that usually attend on human greatness. He whose influence rests on a foundation like this, cannot pass away from the admiration and affection of mankind. Whatever was connected with him, becomes almost sacred to us.

It is not long since I first saw Mount Vernon, being on a journey from the south. It had not occurred to me that we should pass the spot, till it was announced, and I saw before me on a hill, rising gently, and commanding a wide view of the river,

the home of Washington. I had never been so affected by any other scene. Battle fields, and all such places have disappointed me. But here were associations too strong and sacred, a quiet domestic influence in the place itself, so harmonizing with his character, that I almost seemed to see, sitting on his piazza, or walking through his grounds, the man who in his greatness stands so widely apart from all other men in the world's history. I wished to throw myself down like a little child, and weep. The emotions of that hour, and the conversation that followed with an intelligent Virginian, who was subdued almost to tears, I shall not soon forget. And while at the capital, I could not but think, how different would be the standing, and how different the influence going from them, if the noisy actors there, who boast of their chivalry and call themselves our national rulers, would go on pilgrimage to Mount Vernon, there to learn how calm and gentle a thing is the highest greatness and all true dignity of mind.

CHAPTER V.

1797 — 1801.

FOURTH TERM IN CONGRESS — DIFFICULTIES WITH FRANCE — SETTLED IN EXETER — U. S. DISTRICT ATTORNEY — INTEREST IN POLITICS — JUDGE OF PROBATE.

Mr. Smith had now completed his third term of service in congress. His position in the house was gratifying to his feelings, and, with his experience and his attainments, the result of careful study, he had been constantly rising in the esteem of those throughout the country whose approbation he most valued. He was on pleasant terms of personal intercourse with many of the distinguished men of his time: with the elder Adams, Oliver Ellsworth and John Jay, with Alexander Hamilton and John Marshall, Rufus King, and Charles C. Pinckney, Timothy Pickering, Samuel Dexter, and Caleb Strong; and met, with the freedom of intimate friendship, Fisher Ames, George Cabot, Robert Goodloe Harper, Christopher Gore, Oliver Wolcott, Theodore Sedgewick, and others, whose names, now less familiar, were

hardly less prominent in their day.[1] But he was always more desirous of being a lawyer than a statesman, and, tired of public life, longed, as he said, "to be at home, seated by a snug fire of his own kindling, where neither business nor impertinent visitors should disturb his meditations." He had determined to withdraw from the national councils and attend to the practice of the law. But, towards the close of 1796, he was chosen for another term in congress, almost without opposition, having a considerably larger number of votes than either of the other gentlemen, whose names were upon the same ticket. Since he had determined to quit public life, I do not know why he permitted himself to be again a candidate. The reasons given in the following letter, (18th November, 1796,) to Miss Ross, are not quite satisfactory: "Eliza, you are quite a flatterer; I never was very unfriendly to flattery, but yours is peculiarly grateful. You do not spoil me as you begin to fear; your praises make me anxious to *deserve* them. I wish to owe to your justice, what I am afraid I must now attribute to your partiality. You told me, in a former letter, that you found I was a candidate for congress, and that you thought this irreconcilable with what I had told you of my disinclination for public life. The phrase 'being a candidate,' has not the same meaning here as at the

[1] Till the violent contest on the British treaty he had been on friendly terms with Madison, and found him always very obliging in imparting or pointing out the means of acquiring information on political subjects. At that time he had no communication with him, and believed him dishonest; but these hostile feelings disappeared, and during the latter part of his life he held him in great respect.

southward. It means with you a person who expresses a desire for an office, solicits votes, perhaps treats the electors. *Here* it only means a person *talked of* for an office; not by himself or particular connections, for in that case he certainly would not be elected. I did not advertise the public that I would not serve. I did not know that I should have the offer, and I was, and yet am, uncertain whether things may not be so circumstanced that I may wish to go one session more. At present, however, it is the furthest from my thoughts and wishes. My inclination is, to sit down in some country town, where the society will be tolerable, in a small run of practice in the way of my profession. I have, on my own account, but little desire to be rich; and I would take as many precautions against ambition as I would against the yellow fever, the one being as great an enemy to happiness as the other is to life. The fever of the mind I take to be the greater evil of the two." It was Mr. Smith's intention to come with his wife immediately to the north, resigning his office, without even taking his seat under the new commission; but the call of an extra session changed his plan, and on the 4th of April he set out from Maryland alone.

To Mrs. Smith. "New Castle, 6th April, 1797. One o'clock, P. M. Here we have been the last four hours, and here we are like to remain the next four — the wind and tide against us. That is generally the way with misfortunes, they seldom come single. Oh that you were here! that I might have somebody to vent my ill humors upon, somebody in

duty bound to bear them all. Such a villanous house and such company! Positively I will set out on foot, if the winds do not tack about. As to the tide, it is not to be expected that it should relax a tittle of its punctuality and steadiness, to oblige good company; and, myself always excepted, a more scurvy set were never collected, for one packet. Noah's packet, with all the beasts, birds and reptiles of creation in it, was nothing to it. We (by which in this case I mean they,) look for all the world like — like — like the Harrises, Wrights, and Findleys in your neighborhood. After having said this, I will not affront the old gentleman, whose name is often used on these occasions by way of comparison, so much as to say they resemble him. If he resembles them, his enemies have not done him justice — he is worse than they have painted him. One would think, seeing such shoals of miscreants going to Philadelphia, that all the vices, deformities, natural and moral uglinesses of creation, were summoned in congress in Philadelphia, and that these were the deputies. Fit representatives for such constituents! Thank heaven, they can steal nothing from me!"

To the Hon. Dwight Foster, 16th April, 1797. "I need not say that I left Bladensburg, (leaving Mrs. Smith there,) with regret. In a few days we should have set out together, but the president's proclamation deranged all our plans. Not having been fortunate enough to have made my resignation before congress were summoned, I considered that I could not with honor do it till after the session, and therefore will be obliged to attend. You see, my dear

sir, my patriotism is not a dead letter, an inactive principle. It will cost me one thousand miles travel, and the sacrifice of happiness you can estimate without any description or calculation of mine. I left Philadelphia on Monday, at noon, and arrived here yesterday evening. I spent a few minutes with our friend Ames, at Dedham. His patriotism, like the French ships he so fancifully described, burns to the water's edge. We shall miss him next session. I spent some time with Mr. Pickering and the new president, on my way through Philadelphia. I ask the old gentleman's pardon for mentioning him last. I had from the former a very circumstantial account of the villanous treatment of our minister by our good friends and only natural allies, and it is really worse than the newspapers tell. The morning after they received the news of their successes in Italy, they gratified Mr. Pinckney with a note in writing, telling him they would not receive him as minister, and offering him passports for Holland. These devils are honestly entitled to the pure and fervent hatred of every true American. I am glad I have it in my power to say that those, with whom I have conversed, appear to be decided — those south as well as north."

The following portions of a hastily written letter, from the Hon. George Cabot to Mr. Smith, will serve to show something of the feelings of the time, as well as of the sentiments of one of the wisest and ablest men in the union: "Brookline, April 17, 1797. My dear sir: it is easy to say what ought *not* to be done, in certain conjunctures, but diffi-

cult to determine what *ought*. The truth is, that we often arrive at a dilemma, in which something must be done, and yet that something must appear to be wrong; for the inconveniences of the course taken, whatever it be, must be considerable, and will be the most known, and the only ones felt. But no considerations of this kind will deter many men, whom I am proud to call friends, from adopting any measures which, in their judgment, the public good may require. But what are these measures? you ask. I wish I could give a satisfactory answer to the question, but I confess I cannot. There is, however, in my mind, no difficulty in deciding, that an embargo would be much more injurious to us, than all the depredations will be; much more injurious to us than to the French; and indeed much more injurious to the other nations who have colonies, than to the French. As a *permanent* measure, or principal measure in any system, I consider an embargo as always preposterous, being necessarily more distressing to the nation that imposes it, than to the nation against which it is intended to operate. But there is an infinitude of cases in which *partial*, *special*, or *temporary* embargoes may be expedient, and therefore, at all times of public danger, the executive ought to be authorized by law to lay them. In the most probable cases this power cannot be exercised directly by congress without defeating its own designs. I now release you from the embargo, and proceed to express my hopes that the first measures of congress will be to provide *more revenue*. A land tax, however unpalatable at first, will be approved

by the people themselves, after they are brought to contemplate a little more soberly the nature and extent of the public dangers. The few frigates, which are in forwardness, ought to be equipped forthwith; and the merchants should be authorized to defend their vessels, as far as it can be done, without actual war. If no better idea occurs on this point, let convoys accompany them. But a minute examination of the rights of nations is requisite, to enable a man to delineate this system fully. With respect to a new embassy, it would be disgraceful, and indicate a dread of France, which is already too great; but my principal objection to it is, that it may be easily made the means of recruiting the exhausted strength of the French party *within* our country, and their mischiefs are more to be dreaded, than any their masters can perpetrate *without*.

"Thus, my friend, you see with what readiness I give you my crudest opinions. If they are erroneous, it will be a satisfaction that they have no authority, and I no responsibility. But before I close this letter, let me entreat you to be at Philadelphia on the day mentioned by the president. Probably you will then find a well-digested plan of the executive, which, if not repugnant to your own ideas, you will zealously support. If no system is formed by the executive, or such as shall be formed is not supported, there will be no consistency, and of course no efficiency, in our measures."

Within a fortnight of the time that Mr. Smith left Bladensburg, his wife was afflicted by the death of her mother. It is remarkable that neither of

them, in the letters written on the occasion, refers to the only true source of consolation. There is no expression of devout confidence and resignation, and no intimation even of religious feeling. In Mrs. Smith's early letters, generally, there is more of Stoic fortitude than Christian trust; and her husband's Christianity, till he had suffered deeply, seems to have been rather a conviction of the intellect, than a sentiment of the heart. He received it as approved by reason, and cherished it as essential to the well-being of society. He shrunk from the infidel philosophy of France, as tearing away the supports, and laying waste the hopes and finer affections through which alone the great ends of government may be secured.

On the death of his brother Robert, who died in December, 1795, he wrote as follows to the widow: "I sincerely sympathize with you in this afflictive dispensation. As you are called to drink deeply of this bitter cup, I sincerely pray that your fortitude, resignation, and patience, may be equal to the trial. It is not necessary that I should suggest any considerations to you on this occasion; your own good sense will present them to your mind; and that habitual piety, and regard for the principles of religion, which have hitherto marked your character, will not desert you in a time of adversity, when you so much need the consolations which they, and they only can bestow. It cannot fail to give you satisfaction to reflect, that we have every reason to believe that our friend has made a happy exit, and gains far more by the exchange he has made than you lose. From my knowledge of him, and opinion of you, I am

persuaded that your recollections of past scenes will be very far from being painful. *They* will be pleasant, and such as those who have lived a life of virtue and goodness, on the death of a most intimate friend, alone can experience."

After visiting New England, Mr. Smith reached Philadelphia the 17th of May, and took an active part in the business of the session. The following is from a letter to his brother Samuel, dated July 3, 1797: "By the last accounts from Mr. Pinckney, now in Amsterdam, the aspect of things in Europe, as it respects us, is not changed for the better. There is every appearance of war with the terrible republic. If a general peace, however, should now take place, and of course the war cease between France and England, we shall avoid an open rupture with our allies. On Saturday a number of gentlemen in this city, with some members of congress, gave a dinner to Monroe,[1] in testimony of their approbation of his conduct in France. Was there ever such a set of miscreants before? The weather begins to be extremely hot and disagreeable. I long to bid an eternal adieu to Philadelphia, and in this I am joined by Mrs. Smith. My friend Ames writes me every week, and I find much instruction and entertainment in his letters. I am sorry that he is declining in his health, and fear he will hardly survive the relapse he has had this spring."

Mrs. Smith soon joined her husband in Philadel-

[1] It ought to be added that Mr. Smith, after a full knowledge of the circumstances, changed his views in respect to Mr. Monroe's conduct in France.

phia, and remained with him till the close of the session, early in July, when they went together to their new home, in Exeter, New Hampshire. In making their domestic arrangements, as in looking forward to the true sources of happiness, their views were simple, unambitious, and just. "Riches," he said in a letter to her before their marriage, "which take to themselves wings; beauty, which fades as a flower; perpetual spring, which exists nowhere but in the imagination of the poets, make no part of my calculation. Good sense, improved by education and experience; a moderate portion of the good things of this world, remote from both poverty and riches; hearts united in the most tender friendship, whose highest bliss is to make each other happy — indeed, my love, we do not deceive ourselves when we dwell on this picture; it is not overdrawn." In writing to Miss Ross, January 27, 1797, he had said: "My correspondent at Exeter, New Hampshire, has just written me that he can have a house, which he thinks will answer our purpose, for forty dollars a year. I have no recollection of the house of which he writes, though I am well acquainted with the town. In a small village, when one must depend on hiring, you know one cannot have a choice, or at least it must be a very limited one. From the price, I should conclude it must be a very ordinary house; but perhaps it will serve our purpose for a little while, say for a year or two, till we can accommodate ourselves better, either in buying or hiring. I have as yet made no arrangements as to furnishing a house, and shall not, till I have the pleasure of your commands.

I persuade myself that you will concur in opinion with me, that in this, as in everything else, we ought to consult propriety. As our means are not great, and our plans frugal and economical, extravagance in furniture, even if it cost us nothing, should be avoided, as it would tend to destroy that uniformity which I hope we shall never lose sight of."

February 11, 1797. "Nothing can be more just than the sentiments in your letter, 'that if we live above our income to please others, we shall lose that independence without which there can be no happiness.' I wished for wealth, it is true, but I do not repine because we have it not. We shall, I flatter myself, never want a competence; and if heaven had given us riches, Eliza, we should not have hoarded them up, we should only have been the almoner of beneficence. Now perhaps we shall have the same pleasure in giving a little we should have had in bestowing much."

The following, written in connection with the same subject, is in a more enthusiastic strain: "My heart has blossomed with the sweetest hope, and I have been happier than at any former period of my life. In looking forward, though I do not flatter myself with a total exemption from all the numerous train of 'ills that flesh is heir to,' yet I feel that we shall be happy. We shall be but little dependent on the world for happiness. Two hearts, united in the tenderest bonds of love, which live but for each other, which are blessed only when they are blessing, and which receive pleasure only when they bestow it, must be happy; they will find all their heaven in themselves."

These were views to which he always attached very great importance. He consulted a wise economy, that he might be just, independent, and generous. A comprehensive treatise on a careful but liberal system of economy in private life, in public affairs, and especially in the management of literary and charitable institutions, might be compiled from his writings, and illustrated by his example. And when we see how many young men, with fair prospects, ruin themselves by extravagant expenditures, and in how many the springs of kindly feeling are dried up from a hard and unthrifty parsimony; when we consider how little a wise and generous economy is practised by public bodies, whose conduct is too often marked, at one and the same time, by wanton profuseness and niggardly meanness, and when we see the sad waste of funds which have been treasured up, through years of self-denial, that in some public institution they may be a perpetual fountain, going forth in streams of knowledge or of Christian kindness, — we cannot think that he has overestimated the importance of the subject.

On the 10th of July, 1797, Mr. Smith was appointed United States' attorney for the district of New Hampshire, and on the 26th of the same month sent in to Gov. Gilman the resignation of his office as member of congress. If we may judge from his confidential letters, it was then his intention to take no further part in political matters as a public man; and he did not repent of his decision. His professional business and domestic concerns gave him full occupation, and of the kind he desired. In a letter,

9th March, 1798, to his friend, the Hon. Dwight Foster, who was still in congress, he says: "I have never regretted my leaving the house. Of late, indeed, I rejoice with joy unspeakable that I am one of the people, and that I am not a partaker of the dishonor which attached to the body of which Lyon is a member, and who could retain him, when a fair opportunity offered of getting rid of the animal. Indeed, my friend, it is carrying party spirit too far, when we suffer our character, as men, to be disgraced and sacrificed on the altar of party."

He took still a decided interest in public affairs, and, notwithstanding what he here says of party spirit, was undoubtedly more influenced by it at this than at any other period of his life. He was impressed with the horror which the French revolution was so well fitted to produce, and believed that if the principles of the opposition here should prevail, our country would be involved in the same scenes of bloodshed, anarchy, and crime. His letters are marked sometimes by hope, sometimes by gloom, sometimes dealing in a playful raillery, and sometimes pouring out his sarcasms in all the pungent bitterness of a real detestation. "It is," he says, in 1798, "my firm belief that the righteous shall not always mourn, nor the wicked always prosper. On every calculation of human events our prospect is gloomy; but, ere long, the clouds will disperse, and we shall have a bright day." Again: "I am almost beginning to be sick of republican government, and have half a mind to adopt O'Brian's political creed before he sailed from this port (Portsmouth) for Algiers. In

conversation, he did not hesitate to give the preference to the Algerine government over ours. He said the dey and his regency would despatch more business in half a day than our congress in a month; and he did not see but that the Algerine affairs were as well managed as ours. Really, my friend, there is too much truth in all this. Suppose the dey had been buffeted by Satan as we have been by the French, would he, think you, spend three or four years in determining about the means of protection, till everything worth protecting had fallen a prey to the rapacity of the enemy? How long have you been building three frigates? They must, forsooth, be built in three different places; and you must, to show your economy, appropriate but half as much as was necessary for the object. In short, you behave so, that the executive officers must, in their self-defence, deceive you. You talk about checks. There are checks enough, in all conscience, enough to satisfy the most zealous anarchist."

Exeter, 20th April, 1798. "Portsmouth had circulated a petition to the selectmen, to call a town-meeting on the subject. I am told they are now as zealous on the right side, as they have been in times past, on the wrong, and make the most extravagant professions of loyalty to the 'powers that be.' But this is always the way with the mob. Heaven defend us against mob government. 'T is the essence of tyranny; the sublimation of villany, and the scourge of honest men." . . . . "Your favor, with the despatches and instructions, came safe to hand by the last mail. I have, in consequence, re-perused

them. As to our own government, I find everything to approve; and, as to that nest of vipers, everything to condemn. Surely, they are ripe for destruction. If, by God's good providence, they have been permitted to travel thus far in the paths of wickedness, that He, through them, may confound the lying philosophers of our age, the end must be fully answered. Those who are skeptics now, would not listen to a preacher from the dead. Enough has been done for the fools, and as to the knaves, nothing will do them any good, but the whipping-post and the gallows." Again, in reference to the same class of men, he says that he would not counteract the designs of Providence, which possibly might be for wise purposes, to reserve them for punishment in the world to come, but still he should be glad to have them hanged here; for, he adds, "it is but a small addition to the punishment that awaits them, but very useful in this world, and particularly in this country." . . . . . "We are this moment engaged, in this town, in raising a temple to the Lord of Hosts, not a tabernacle for the filthy worship of the goddess of reason. The French pollute everything they meddle with. We have great reason to be thankful they have not laid their filthy hands on religion. They have brought reason, republicanism, public spirit, &c. into ridicule. I hope God has, in his good providence, determined to honor these sacred things, by making the abuse of them as infamous as they have made themselves wicked." "The French praise him, (Gerry,) I cannot like him. Since they have voted the Deity in again, I own I feel more doubts than usual about the evidences of his religion."

27th June, 1798. "I received your last letter of the 19th by the mail of Monday, and anxiously wait for the mail of this day. The plot thickens, and we are near the catastrophe. I am inclined to think that the public mind is prepared for the last solemn appeal. War is inevitable, and the sooner we have it, the better. I have seen Talleyrand's letter in the newspapers. It is couched in true democratic language, well calculated to 'deceive the people who sit upon the wall,' to whom it is, in fact, addressed. On men of sense it can have no influence, except that of making them hate the great nation still more. It is entirely destitute of argument, and is no answer to the memorial. I am sorry the evidence multiplies so much against Gerry. He must have acted imprudently at least; but Marshall is with you, and can tell you all about it. Give me the result of Marshall's communications. I place great confidence in him as a true patriot and a discerning man, and he must be able to communicate much valuable and useful information, and to advise what Israel ought to do in this perilous hour.[1] The French must, in all this manœuvering with Gerry, principally aim at gaining time. They never can believe that our government will suffer the negotiation with him alone to proceed.

[1] Judge Smith used to give a remarkable instance of Judge Marshall's ability as a debater in congress. There had arisen a discussion on some intricate and perplexing subject, in which several prominent members of the house, and, among them, Mr. Gallatin, had taken part. After they had spoken, Mr. Marshall rose, and in a few words laid the whole matter open, with such perfect distinctness, that Mr. Gallatin, who had just spoken on the opposite side, exclaimed, "Mr. Speaker, we are all wrong; the gentleman from Virginia is right," and the whole house was satisfied. It is said that Judge Marshall never, in his life, took up more than three quarters of an hour in a single speech.

Indeed, I doubt not, long ere this he is stripped of his ministerial robes. The French have my free permission to embrace him as kindly and fraternally as they please. I wish our good president could be persuaded to rely a little less on himself, and a little more on his faithful ministers, who, to my certain knowledge, were opposed to this appointment, or, rather, were not consulted."

These extracts, though very great allowances will of course be made for their humorous exaggerations, sufficiently show how strongly he was carried away by the political feelings of the day. He was consulted by the secretary of the treasury, Mr. Wolcott, in respect to his appointments in New Hampshire, and in the advice he gave, took decidedly the ground, which he afterwards as decidedly condemned, that all, who did not support the administration, were to be removed from office. "A real jacobin," he says in a letter to Mr. Wolcott, "in my opinion is never made by want of knowledge only. It is the qualities of the heart that constitute the essence of this detestable character. He hates the light, because it reproves his deeds. It is a solecism in politics, that a government should be administered by its enemies. It has always been my opinion, that those whom the sovereign people entrust with the administration of their political concerns, are in duty bound to appoint and continue in office, those men, and those only, who are firmly attached to the principles of our government and the administration." Mr. Smith even went so far as to maintain that a public officer should be removed, unless he took an active part in support

of the administration. In a letter to Joseph Whipple, who by his advice had been removed from an important office in Portsmouth, he says: "To your politeness as a gentleman, integrity, zeal and intelligence as an officer, I could most cheerfully bear witness. But these are not called in question. You are sensible that the public opinion of your politics is what I have mentioned. . . . . When our government has been assailed by a profligate foreign faction, to be moderate, is to be cold in the cause, and at once a hypocrite and a traitor. Ten thousand lies have been daily circulated by lying men and lying presses against our public organs. Those who knew them to be so, and yet have been silent, are sharers in the guilt. I am told that treasonable speeches against the government, were daily uttered in your streets. Silence under such circumstances, is a sort of misprision of treason."

This view of the subject is not unlike that generally taken by violent partisans in defence of their illiberal and exclusive measures, and is, as Mr. Smith in his riper judgment maintained, inconsistent with the true principles of republican government. It opens the way to exaction, meanness and corruption, converting the offices of a people into the spoils of party warfare, holding them up, not to be filled with dignity and fidelity, but to be polluted and preyed upon by partisan rapacity and violence. It degrades the political action of a nation, from an honorable contest in behalf of principles and measures, to a low scrambling for official rank and emolument, and enlists under its standard, only the selfish and vulgar passions of our

nature. The appointments made by Mr. Smith's advice were, I believe, such as are usually made under such circumstances; and in more instances than one, the places of experienced and faithful officers were assigned to men of insufficient attainments and irregular habits. His motives were undoubtedly correct. The perilous condition of our government, exposed to foreign factions and intrigue, and the consternation caused by the mighty events that were shaking the earth, and threatening all governments with ruin, might at that time furnish an excuse for stronger measures than could be justified at any subsequent period of our history. Still, proscription for opinion's sake, is at all times inconsistent with the genius of a free government, and must at length prove fatal in its consequences.

But however much Mr. Smith may have been interested in political matters, his attention was almost exclusively given to the studies and business of his profession. His practice was laborious and extensive,[1] and with what he had already laid up, promised in time a competency for himself and family. "I have less," he somewhere says, in a letter to his brother, "of the hoarding appetite than most people, and I thank God it does not increase with age. I love economy, and hate avarice and idleness. I never lost an hour's sleep with care, and never in-

[1] For the year ending 1st of September, 1799, the net income from his profession was $2351; do. do. ending 1st of September, 1800, was $3018 69; do. do. ending 1st of September, 1801, was $3077 50. He practised in the counties of Rockingham, Strafford, Hillsborough and Cheshire.

tend to. I would choose to fill up the day with business and action, because I am happiest when employed; but care and anxiety I put far away from me." This was, through life, a true picture of himself. He loved labor for its own sake, and had besides an honorable ambition to do his best, in whatever he undertook. But he indulged in no unnecessary forebodings or regrets. Having done all that he could do, he was content to leave the rest with Him who governs the world, and this habitual cheerfulness, while it left his faculties always bright, contributed in no small degree, to his ability to labor, his health, enjoyment and success. In the fall of 1800, Mr. Smith was appointed judge of probate for the county of Rockingham, and continued in that office for about two years. He labored hard to reduce to order this branch of law, and prepared a full and elaborate treatise on the subject. This work, which, in the opinion of one eminently qualified to judge, was much superior to any treatise on probate law then existing, is still in manuscript. But more than forty years have passed by, and no legal essays, except those, which with remarkable power illustrate the great and fundamental principles of law, can, after lying in silence nearly half a century, speak with any decisive authority to a generation who have sprung up since they were prepared, and who, educated in other elementary works, are bound by other systems of legislation.

CHAPTER VI.

1801 — 1809.

JUDGE OF THE U. S. CIRCUIT COURT — CHIEF JUSTICE OF NEW HAMPSHIRE — INFLUENCE AND CHARACTER AS A JUDGE — HIS CHARGES TO THE GRAND JURY.

On the 20th of February, 1801, Mr. Smith was appointed a judge in the United States circuit court, which had been established a short time previous. He accepted the appointment, in the following letter to John Marshall, then secretary of state, who had interested himself in securing for him the office: — "Exeter, N. H., March 11, 1801. Sir: I had the honor to receive yesterday your letter of the 21st ult., inclosing a commission for the office of circuit judge of the United States. You will be pleased to inform the president, that I accept the appointment, and that it shall always be my earnest endeavor to merit, as far as I am able, this distinguished mark of confidence. Allow me to add, that I am

not insensible, on this occasion, to the kindness and partiality of my friends. My obligations to you are particularly grateful, as affording to me evidence of the regard and esteem it has always been my wish to deserve and my pride to cultivate. I am with great respect, sir, your obedient servant, J. S."

Mr. Smith had now reached the office to which, above all others, he aspired. He was particularly fortunate in his associates upon the bench, and always spoke of John Lowell, the chief justice, as one of the purest and wisest of men, and of Judge Bourne, as a delightful companion, full of intelligence and life. There was just the sort of difference in their characters, which might serve to make their intercourse most delightful; the two younger judges having that boyish playfulness in conversation, which contrasted so finely with the more sedate wisdom of the chief justice, whose children still remember to have seen their mother laugh, till the tears ran down her cheeks, at the sallies of Judge Smith's wit. Judge Lowell's health had already begun to fail, allowing him no opportunity to do justice to his powers, and short as was the duration of the office which he held, it outlasted his life. His death, at the time of their greatest perplexity, was a sore calamity to his associates.

For three months before engaging in the active duties of his office, Judge Smith employed himself not less than fourteen hours a day on his professional studies. He seldom went out of the house, his daily walk extending only from his dining-room to his library. Though always a hard student, he now re-

garded his former attainments as of no account, and afterwards looked back on those three months as the beginning of his legal education. It might not be safe for others to imitate his example in this respect, for though not of a strong constitution, he had, to a very uncommon extent, the power of enduring long-continued and severe intellectual application. Like the late Dr. Bowditch, he could bear to be interrupted in the midst of his professional investigations. After attending to what had called him off, he would return immediately, and without embarrassment, to his studies, and go on with them as if nothing had occurred. However deeply he might be engaged, and however suddenly drawn off, he would seemingly without effort, and with the utmost good humor, join, whether in a frolic with a child, in sportive conversation with a young lady, or in answering intricate questions of law; and the moment these were finished, return to his previous investigations, when no ripple remained to show that the clear deep current of his thought had been disturbed. Those who studied law in his office, speak of this as a remarkable feature in his character. At first they would hesitate about breaking in upon him, when they saw him absorbed in study. But they soon found that they need have no apprehensions, that, however much he might be engaged, he would cheerfully answer their questions, taking whatever time might be needed for the purpose, and then return to his studies, without appearing to have been drawn aside. It is easy to see how valuable a trait this is in the character of a lawyer, and especially of a judge, enabling

him to carry on a profound and laborious process of investigation, without permitting the thousand little points that are constantly coming up, and which sometimes materially affect the result, to escape, divert, or annoy him.

Judge Smith entered upon his new office with the expectation that it was to continue for life. The studies which it required of him at home, and the business of the circuit abroad, were alike suited to his taste, and furnished the sort of variety which is so essential to a full and liberal culture of the mind. He was brought into the society that he most enjoyed, and was filling, in the eyes of the community, a useful, responsible, and honorable office, and, in the enlightened and conscientious discharge of its duties, he looked forward to the gratification of his highest ambition. By devoting to it his time and strength, by diligence in study and fidelity in action, he hoped to be constantly enlarging his stores of knowledge, to fulfil an important trust as a member of society, and to gain the approbation of the wise, and the confidence of the good. He used to say, it was the only office that he had ever greatly desired, or the loss of which he had greatly regretted. In age he looked back on no part of his public life with so much pleasure, though it was a pleasure accompanied always by the feeling, that in losing the office he had been thrown out of the place best fitted for his improvement, distinction, and usefulness.

He attended on all the circuits; but I know of nothing unusual connected with them. In consequence of the mental derangement of the district

judge in New Hampshire, he was appointed to hold the district court in Portsmouth, when a circumstance somewhat embarrassing occurred. The district judge, unconscious of his infirmity, took his seat upon the bench, attended to the business as it went on, and, after the counsel had got through, rose to charge the jury. He was, however, soon perplexed, and being unable to proceed with his charge, uttered a short prayer and retired; when the circuit judge went on, as if nothing had taken place.

Early in the next session of congress, (1801–2,) there was manifested a strong disposition to repeal the judiciary law of the previous session. A bill for that purpose originated in the senate, and after a long and spirited debate,[1] finally passed the house by

[1] The following are extracts from two letters from a member of congress, Samuel Tenney to Judge Smith, dated January 14, and February 19, 1802. "The question for repealing this law has been several days debated in the senate; and several members on both sides of the house have highly distinguished themselves, particularly Morris and Tracy, for sound sense and solid argument; Wright, Cooke, and Stone, for nonsense and absurdity.

"When Tracy, after his speech, retired to the fire, half dead with his exertions, Calhoun coming up to him, gave him his hand, and said, 'You are a stranger to me, sir, but by —— you have made me your friend. I had been told a thousand lies about that part of the judiciary established last winter, particularly that the bill was brought in at the heel of the session, and hurried through without consideration or debate, in consequence of which I was disposed to repeal it. You have convinced me that the repeal would be both inexpedient and unconstitutional. I shall be with you on the question.' 'Mr. Calhoun,' said Tracy, taking him by the hand, 'may we depend upon you?' He replied, with great earnestness, 'By —— you may.'

"He was followed by Mr. Hemphill, of Pennsylvania, who for more than an hour held both sides of the house, the senate, the lobby, and the gallery, in a mixture of surprise and admiration. He is a country attorney, about twenty-eight years of age, equally remarkable for the

a large majority early in March. This was purely a party measure, adopted solely for the purpose of displacing the judges, who had been appointed by Mr. Adams, and, having that for its object, was palpably a violation of the spirit, if not of the letter, of that part of the constitution which would guard the independence of the judiciary. But whether constitutional or not, the voice of the dominant party was for it, and nothing further could be done.

I find the following letter from Judge Tilghman: Philadelphia, May 22, 1802. "Sir: I have the honor of addressing you, on behalf of the circuit judges for the third circuit of the United States. The act of the last session of congress, repealing the law under which we hold our offices, has filled our minds with the most serious reflections. Believing, as we do, that the repealing law is a violation of the constitution, we feel ourselves impelled by sacred obligations, to take legal measures for disputing its validity. How to bring this important subject to a constitutional decision, with the least possible interruption of the public convenience and tranquillity,

simplicity of his manners, the correctness of his morals, and the modesty of his deportment. It was the general idea, that the subject had been so completely exhausted in the senate, that nothing was left for us but a different dress and new arrangement of the arguments there used. But the ground taken by Mr. Hemphill was so new, his reasonings from various parts of the constitution so clear, and his deductions so incontrovertible, that it was said several of the majority of the senate were staggered. At the close of his speech, Giles moved that the committee should rise and report progress, though it was nearly an hour earlier than the usual time of adjourning, observing, that the arguments of the gentleman were very weighty, and that he was not then prepared to answer them."

and how, in the meantime, to conduct ourselves with the greatest propriety, are questions which require full and mature deliberation. It appears to us, that they cannot well be answered, without a personal communication of sentiments between the judges of the different circuits. A free and candid discussion will lead to that uniformity of conduct, which is, in many respects, so desirable. We feel assured that we are all equally interested in the public welfare, equally influenced by pure and honorable motives. Under these impressions we have thought it advisable to request a general meeting of the circuit judges, in the city of Philadelphia, on Saturday, the 17th July next. An earlier day would not afford time for proper notice, and a later might be attended with inconvenience. We hope for the benefit of your presence and assistance; but should you be unable to attend, which we should indeed consider peculiarly unfortunate, you will much oblige us by a written and full communication of your sentiments."

To this, Judge Smith replied: "Exeter, 7th June, 1802. I feel, as you do, impressed with the conviction that some steps ought to be taken to obtain a constitutional decision on the late act of congress, repealing the judiciary law of 1801. It is certainly of the highest consequence, in an affair of this kind, delicate as respects ourselves, and important as respects the public welfare, that the most unexceptionable course of action should be adopted and pursued. I see no objection to the meeting you propose in July. Perhaps it is the only way of accomplishing what we all, I presume, desire. I do not know that

it will be in my power to attend. If it should not, I will with pleasure communicate anything that may occur to me on the subject of the meeting."

Only four judges attended the proposed meeting. Another meeting was appointed to be holden in Philadelphia, on the 20th of November, the result of which was, that a memorial to congress was drawn up and presented, but without any effect. The loss of this office was the severest disappointment that Judge Smith experienced in his public life. But before its term expired, another important judicial station was offered to him. The office of chief justice of the superior court of judicature in New Hampshire had been vacated by the resignation of Simeon Olcott, who had been elected to the senate of the United States. Timothy Farrar was appointed by Gov. Gilman, and received the commission of chief justice in February, 1802. He was very desirous that the administration of justice should be established on purely legal principles, and, with a modesty not less remarkable than his good sense, kept the office open till one, whom he considered greatly his own superior in the law, should be at liberty to take it. This he did by presiding in the court as senior justice, without either accepting or declining the commission which had been offered to him, until it was ascertained that Judge Smith's office in the federal court was to be taken from him. He then formally declined the appointment, and the commission was made out on the 17th of May for Jeremiah Smith. But the smallness of the salary (eight hundred and fifty dollars a year) was such that Mr. Smith

could not think of accepting it. In his reply, June 5, 1802, to Gov. Gilman's notice of the appointment, after expressing his gratification for this new mark of confidence, and his willingness to continue in that course of life, he adds: "But with the compensation now annexed to the office, it is not in my power to accept it. It has not been my lot to acquire any considerable property hitherto. I have a family, for whom I am bound to provide. I cannot think it my duty, at my present time of life, to occupy a situation in which I must eventually consume the small earnings of a few years of industry and economy, and very soon find myself, and those I love, depending for subsistence on public or private charity. This is a subject on which I could say a great deal, but the delicacy of my peculiar situation prevents. I would not have said so much, and especially about my own affairs, did I not feel anxious that you, and my fellow-citizens in general, should be possessed of the true motives which actuate me on this occasion. Though I cannot but feel much regret, that I am not better qualified, yet if it seems meet to the legislature to make such provision for the office as will enable me to accept, I will do so with a firm determination to devote all my time and powers, such as they are, to the discharge of its important duties. If this course should not meet the general approbation of those to whom the people have intrusted the power, I shall most cheerfully acquiesce, so far as I am personally concerned, and shall return again to private life with as much pleasure as ever I quitted it."

In the mean time it had been suggested to him by

Mr. Dexter, of Massachusetts, through the Hon. Timothy Bigelow,[1] that he ought formally to resign his office of circuit judge, before accepting that of chief justice of New Hampshire. To this he replied, June 7, 1802. "My dear sir: I had the pleasure of your letter of the first instant a few days ago. I will not accept the office of chief justice, unless addition is made to the compensation; of which there is no greater probability than that a thousand democrats should in one day become honest men, or that our brother Prentice should set up a singing school, and teach vocal and instrumental music. I cannot, however, subscribe to the sentiments contained in your letter, on the necessity and propriety of *resigning* the office lately *taken from* me, in case I should find an inclination to accept that of chief justice. I certainly believe that I shall continue a circuit judge *de jure*, and it is equally certain that I shall cease to be a judge *de facto*. The office of supreme judge in this state, by our state constitution, is incompatible with the holding of a living office under the United States. But as I am to receive no salary, and am in no immediate expectation of a pension from the United States, I do not conceive that it is incompatible with my titular office of circuit judge, according to the spirit of our constitution. So much in answer to an objection from a New Hampshire citizen. In

[1] Mr. Bigelow, for many years speaker of the house of representatives in Massachusetts. He used to say that Judge Smith, with whom he was on intimate terms, once exclaimed to him: "Bigelow, you are a clever fellow: you *are* a *very* clever fellow: I have always said so, and have made a great many enemies by it too."

the constitution of the United States, I find nothing which renders the two offices incompatible. If I viewed it in this light, I should decline, at all events. I conceive that there is still a faint glimmering ray of hope, that the circuit judges will be restored. I am well assured (in confidence) that measures will be taken to try the validity of the repealing act. I do not conceive that accepting an office in the state incompatible with that of circuit judge, according to the state constitution, would be evidence that I consider the office as extinct, in consequence of the repealing law. It would only be evidence that I consider its duties and emoluments as suspended, and chose to make myself useful during the suspension, or, to come still nearer to the truth of the case, that I choose to live, till it should please the sovereign people to 'overturn, till they whose right it is should judge.' The evidence, as it respects the effect of the act of congress on the judiciary system, would be just as great, I think the same, if I should employ myself in practice, as I must; for I have considered practice at the bar equally improper in a circuit judge, as administering justice on the bench. Neither is incompatible, but both improper, if the emoluments of the office had not been taken from it. Suppose some of your Groton patriots should take it into their wise and patriotic heads, that it would be doing something for the good of the whole, to turn you out of your dwelling, in some violent storm, and, by force, hold you out; would you think it necessary, in order to show that you thought the whole proceeding illegal, to remain in the highway as near as you could, and suffer

a drenching as well as expulsion? Would it weaken your title, in the opinion of others, or betray any want of confidence in it on your part, if you were to take the earliest opportunity of obtaining the best shelter you could, and leave it to the proper tribunal to settle the question of right? I have heard of clergymen, who, when denied entrance into their pulpits, have thought it necessary, in order to keep up their claim to salary, to wear a band and black gown on Sundays; and some have thought it necessary to hold forth, whether they had any hearers or not, as near the meeting-house door as possible. I do not pretend to have thought much, and, as you will readily perceive, I have not thought seriously on this subject. If accepting an office in the state would be a vacating the office under the United States, then I conceive your opinion well founded; otherwise, I do not feel the force of the observations contained in your obliging letter. And certainly, as they come from two persons I have always been in the habit of esteeming, I feel disposed fully to appreciate them."

An addition was made to the salary of the chief justice. By an act of the legislature, (18th of June, 1802,) it was raised from eight hundred and fifty to a thousand dollars. The following letter to Governor Gilman, is dated 13th August, 1802. "Sir: Contrary to my first determination, I have at length concluded to accept of the office of chief justice, and to resign that of judge of probate. The principal objection I have had to this acceptance, respects the salary annexed to the office, which I have thought, and still think inadequate to the duties. It is with

great reluctance I have formed this determination, and I have a strong presentiment that I shall repent it. I mention this that I may avoid the imputation of fickleness, in case on trial I should find it to be my duty to resign it."

Upon trial he was, as he had anticipated, entirely convinced of the inadequacy of the compensation, and in June, 1804, addressed to the two branches of the legislature a letter, containing suggestions which deserve to be seriously considered by those who are engaged in legislating on this delicate and important subject. If, through the smallness of the salary, competent men are excluded from the office; and the bench is made a sort of public asylum for those who have not talent or industry enough to support themselves at the bar, for every dollar that is saved, hundreds will be lost to the community. The delays occasioned by unskilful management, the needless continuance of actions, the multiplication of law-suits growing out of the uncertainty of the law in the hands of those who do not understand its principles, and the consequently increased expense of jurymen and witnesses, must add indefinitely to the cost. And the injury is one which falls with peculiar severity upon the poor, who must look for protection to an able and impartial court; since with a feeble court it will be in the power of the rich to secure the most ingenious advocates, and to worry out a poor adversary by the obstacles, which a skilful lawyer may throw in the way of an unskilful judge, to obstruct or turn aside the course of justice. But where the judges are from the ablest members of the profession,

the poor man, who can afford to employ none but weak or inexperienced counsel, and who seems ready to be crushed by the unequal weight of a powerful adversary at the bar, will find upon the bench an advocate who will restore the balance, and secure to him his rights. It is strange, therefore, that it should so often be considered a popular measure to reduce the compensation of judges.

"To the president of the senate. Exeter, 6th June, 1804. Sir: When I accepted the office of chief justice, I was not so vain as to imagine that I possessed suitable qualifications for an office of so much importance. At the same time I viewed the compensation annexed to it as inadequate, if its duties were performed in any manner as they ought to be. But having for some time before left the bar, I was induced to make the experiment. Sufficient time has now elapsed for that purpose. I have endeavored faithfully to perform my duty; I have spared no labor or pains, but have wholly devoted myself to the business of the office, and yet I am sensible that the performance has been extremely imperfect. It has been far, very far below my own wishes. But whatever opinion may be formed on this subject, I am constrained to observe, that I have found the compensation so inadequate, that I cannot longer retain the office. It has been my fortune to acquire but little property. For the best part of the last sixteen years, I have been a very laborious and assiduous, though very unimportant servant of the public; and, whatever other advantages may be supposed to have flowed from these employments, they have not proved

profitable to me in a pecuniary point of view. At no period of my life have I been anxious to acquire property. A competent support is all I have desired, or yet desire, and for that I must still depend upon my daily labor. Having been from the bar for upwards of three years, I prefer continuing in my present office, to returning again to the practice. But if the compensation be not in some way made equal to the actual expense of living, there is no alternative left. I must yield to the dictates of necessity. The office with which I have been honored, I believe to be of sufficient importance to merit a decent maintenance. I know it has been imagined by some that its duties require but a portion of the time of the person holding it, and that a considerable part may be devoted to other pursuits. I conceive this to be a mistaken opinion. A judge must annually travel, on the circuits as they are now established, upwards of seven hundred miles, and be absent from his family near half the year. In every county, and at every term, questions arise which are both difficult and important. To delay the jury, the witnesses, and all those who have business at the court, till these difficult questions are settled, would be attended with great expense and inconvenience. It must be obvious, on a moment's reflection, that this kind of business can be better done in the vacation, when the judges are relieved from the hurry and bustle of court, and from the fatigue attending the hearing a multiplicity of causes, and when they can have access to such books and papers as may be profitably consulted. In this way, and I will venture to say in

this way *only*, can new and difficult questions which daily arise in the courts, be settled in a manner honorable to the court, or satisfactory to the parties. In this way decisions may be made, which will serve as rules for deciding similar questions as they arise, in future causes, and the law will become, what it ought to be in every free state, a known rule of conduct. So strongly am I impressed with the utility of this course of proceeding, that I will venture to say, that let a judge set out with ever so large a stock of knowledge, and let his natural abilities be ever so good, still he will meet with many hard questions, too difficult to be solved on the circuit; questions which will require both time and consideration, and afford sufficient employment during the vacation. He will find it useful to revise all opinions formed in court, as well as to investigate questions reserved. He will find it necessary to store his mind with knowledge of the usages, customs and history of his own country, with the opinions and decisions of those who have gone before him, and to avail himself of the knowledge and experience of the wise and the good of every age and country. If he does not pursue this course, his judicial opinions will not be respectable, and of course they will not be respected. The law will be unknown, and consequently uncertain. Nothing will be settled on a firm and solid basis — everything will be in a state of fluctuation. This will be a fruitful source of litigation, and to this it is in part to be ascribed that in some states, I will not mention our own, there are ten times as many lawsuits in proportion to the number and wealth of the inhabitants,

as in others. I can assure you, sir, imperfectly as the duties of my office have been discharged, (and no man can be more sensible of this imperfection than I am,) I have been for the last three years as much occupied out of court, in the way I have mentioned, as I have been engaged in court. The vacation has not been a season of leisure to me, and I cannot help flattering myself that by these means, in some small degree, more business has been done and considerable expense saved, both to the public and to the parties. The constitution has, in my opinion, wisely prohibited a judge of the superior court from holding any other office; because it considers him as fully occupied. I can hardly persuade myself that a good judge, while in office, will be fit for anything else. His mind will be wholly engrossed with the business of his office, and when that is the case, he will derive neither pleasure nor advantage from other pursuits.

"If there is any one who imagines that this office does not require the closest attention, and the most assiduous and constant application, I must refer him to those judges in the different states, who have been examples of what I recommend. This office requires health, though it has no tendency to give or continue it. It requires the best part, not the dregs of life. The employment of a judge is a business that cannot be slighted. It is an unpleasant employment; he has to contend with ignorance, knavery, and with prejudice — the prejudice which every man feels, in favor of his own cause. He acts in public, and every part of his conduct is open to ob-

servation. If he commit any improper act, he is sure to be detected and exposed ; if he is ignorant, it is impossible it should be concealed. He must not expect popularity ; he whose express duty it is to deal out justice to others, must not expect justice himself. The losing party is under a strong temptation to arraign his knowledge or his impartiality. In short, his situation may be compared to that of a sentinel, who is always on duty in the face of the enemy. Such is my opinion of the arduous employment of a judge, that I am fully persuaded that ten or twelve years' faithful performance of its duties, such as they are in this state, will wear out the best constitution, and leave the man, if it leaves him life, nothing but the comfortable reflection arising from a conscientious discharge of duty. If there is any person who entertains an opinion that the office does not require professional skill, I shall hardly be persuaded that he has ever looked into a court of justice, or bestowed a moment's reflection on the subject.

" Those whose lot it has been to prosecute or defend their just rights, when invaded, surely are of a different opinion. Is there any one who seriously believes that honesty and integrity are all that are necessary in an advocate at the bar ? Where is the man who would think himself or his cause safe with an honest lawyer, destitute of skill in his profession, while his adversary was aided with counsel possessing superior knowledge, if the judge was deficient in legal information ? Would he feel no apprehension lest the superior talents of the advocate should

mislead the judge, however upright his intentions? Is honesty, in common life, a sufficient protection against cunning and talents, and is the law a science where a man may become a proficient without study or application? If you require professional knowledge in an advocate, why not in a judge? It is generally supposed that there is one side in a court of justice, who have an interest in perverting the law and confounding right — an interest in obscuring the cause, instead of enlightening the court. If this be correct, and if the judge has no resources of his own, how is he to detect and expose such attempts to mislead his judgment? Is it not absurd that a judge, when seated on the bench to dispense justice according to law, should on all occasions be under the necessity of learning from the bar what the law is? Is it not unseemly, that the people should in a court of justice look up to the bar, and down upon the bench? Will parties feel satisfied with the decision of their causes, if they have not the fullest confidence in the knowledge, as well as in the integrity of the court? In these observations I certainly mean no reflection on the bar. So far from entertaining prejudices against the profession, it is natural to suppose that, as an order of men, I highly respect and esteem them. But still I maintain, that in the order of things, judges should not be less skilled in the principles of law, than the advocates who manage the causes at the bar. And yet I believe this superiority in the advocate will always exist, as long as the one employment gives an honorable support, and the other scarcely affords a scanty subsistence.

"One would think it would be the policy of the public to invite, by holding out suitable encouragement, the most eminent at the bar or in the state, those of the fairest character both for talents and integrity, to a seat on the bench. There were at a late period, living, ten persons who had resigned, and two who declined the office of judge of the superior court. Three are lately deceased. Since the revolution the judges of the superior court, upon an average, have held the office less than five years. Can there be better evidence that the emoluments are not considered as adequate to the duties? While a judge holds the office no more than five years, have we much reason to expect uniformity in decisions? Do we not lose all the benefits flowing from experience?

"As to the dignity of the office, I do not wish for any salary on that account. I believe it is with this, as with every other office in the state, the honor and dignity of the office depend altogether on the manner in which its duties are performed. It is the importance of the office which requires salary, not its dignity. It may, however, be correct enough to say, that the honor and dignity of the state, as well as the true interest of the people, require that the judges of the superior court should be neither indigent nor dependent. I have thus taken the liberty to mention some of the many considerations which have occurred to my mind, as reasons why the compensation to the office I now hold should be rendered more adequate to its duties.

"If these, with many others that will occur to every

member, should be deemed of sufficient importance, to call the attention of the legislature to the subject, they will doubtless receive all the consideration they deserve. As I have expressed my sentiments with candor and frankness on this unpleasant subject, I indulge the hope that they will be candidly received. If, in the opinion of the legislature, the public interest requires further provision for the office which I at present hold, I shall rejoice. Three years' practice has made the duties more easy to me, and I feel that I am approaching that period of life, when the employment of advocating causes at the bar becomes irksome and unpleasant. If, on the contrary, it should be thought that ample provision is already made for the office, I shall cheerfully acquiesce. There may be, in the state, persons of sufficient fortune to enable them to make a sacrifice which my circumstances will not allow. Doubtless there are men of sufficient patriotism to induce them to undertake a very arduous and difficult office; I am very sure that many may be found every way better qualified than I am. I shall trespass no longer on your patience than to request that you would have the goodness to lay this letter before the honorable body over which you preside. I have made a similar communication to the house of representatives. I will only add that an early expression of the will of the legislature on this subject, as it will determine the future course of my life, will be esteemed as a great favor. I have the honor to be, with the greatest respect, sir, your most obedient servant. J. S."

On the 15th of June, Judge Smith wrote in confi-

dence to his friend, John C. Chamberlain, a member of the legislature: "I have just heard that there has been a committee on my letter to the two houses, and that they propose reporting fifteen hundred dollars. It would have been improper to have named any sum in my communication to the legislature. I am satisfied with that proposed, but anything less would not answer my purpose. I have kept regular accounts of my expenses since I came to Exeter, and upon an average, they have exceeded twelve hundred dollars a year. I do not take into the calculation my expenses on the circuit, which have annually exceeded three hundred dollars. This latter sum must be deducted from the salary, and the remainder is the real compensation. This will barely defray the expenses of my family. The little I am now worth is already too small to leave as the sole dependence of my wife and children, when I go from them. God knows when that will be. It is, perhaps, an event at no great distance; at any rate, it must happen in a few years. I cannot bear to see this little fund diminish as I wear out. I mention these things by way of apology for saying that I would have you or some other of my friends, in case there should be a disposition to grant something, but less than fifteen hundred dollars, (so as to leave me twelve hundred dollars net,) to declare in my behalf, that I cannot accept it, and that I would not give the legislature any further trouble on my account. I have not taken this step without mature reflection and consideration. It would mortify me if the legislature should think me alto-

gether unworthy of the office I hold, but I can bear even this mortification better than poverty and dependence. I have hitherto endeavored to act my small part on the stage of life honestly, and, with the assistance of heaven, I will not disgrace the past by the future. I will try to get an honest livelihood at the bar, and I do not despair."

Before Mr. Chamberlain received this letter, a resolution had passed the house by a vote of one hundred and one to fifty-seven, and the senate by a vote of eleven to one, fixing the salary of the Hon. Jeremiah Smith at fifteen hundred dollars a year, during his continuance in the office of chief justice. This resolution was the more honorable both to him and to them, from the fact that a majority of the legislature were opposed to the political principles, which he was perfectly well known to profess.

On first coming to the office in 1802, Judge Smith "rode the circuit" with Judges Farrar and Livermore, and in Strafford, Rockingham and Hillsborough, declined taking any active part in the trial of causes. Judge Farrar, from whom I have the account, attributed it partly to the unwillingness of the chief justice to take his place at once, above those who were his seniors in office, and partly to his diffidence about trusting himself to act, before he could feel at ease in his new situation. In Cheshire county an important cause was to be tried, which had excited a good deal of interest, and which had already been tried at three different times, without either the court or the jury being able to agree, it being then the practice of all the judges who chose it to sum up to the

jury, so that the judges might differ on the law of the case, as well as the jury on the facts. It was the case of Lyman and Foster. Judge Olcott being a parishioner of Foster, the minister of Charlestown, had declined giving any opinion, and the Judges Farrar and Livermore, had at each of the different trials, charged the jury on opposite sides. At Amherst, therefore, they agreed between themselves that they would have nothing to do with it at the next trial, but would leave it entirely to the chief justice, and on their way to Keene, told him that he must take it into his own hands. He was a good deal moved, and with great reluctance assented. The trial lasted two days. Pierrepont Edwards, then a very distinguished lawyer of Connecticut, appeared for the plaintiff, while the defendant was represented by Benjamin West, of Charlestown, "one of the most successful advocates," says Mr. Webster, "if not the most successful, before a jury, that ever practised in the courts of New Hampshire; a person who, to singular powers of popular logic and persuasion, added the weight of the utmost purity and respectability of private character; and one who, if he had not always refused public office, could not have failed to make a figure in the national councils, into which he declined entering after being elected by his fellow-citizens a representative in congress."[1] Judge Smith

[1] There was no man whom Judge Smith, down to the close of his life, remembered with a more affectionate respect. He spoke of him as excelling at the bar, particularly in the narration of facts. In the case of Lyman and Foster, Mr. West spoke of the plaintiff as a rich man, who could send into another state for the ablest advocate, while his client,

did not sleep a moment during the night after the argument, and the next day, on rising in court to give his charge, which had been almost entirely written out, he was so agitated, and his hand trembled so much, that he could not hold his papers, but was obliged to sit down, and deliver it from his seat; a practice which he always afterwards continued, and which has been kept up by his successors. In this charge he first urged a maxim on which he always afterwards laid great stress, that in civil matters it is often of greater consequence that a cause be decided, than that it be decided right.[1] The jury agreed in finding a verdict for the defendant.

From the time when he entered upon his office in 1802, till he left it in 1809, Judge Smith gave himself to it with his whole heart. He went through nearly the whole circuit of the state twice a year, travelling over roads often so bad, that he could go only on horseback, and bridges, of which, many years afterwards, he said that he remembered well their condition when he had occasion to pass them; "and

"the poor minister of a country town, was obliged to put up with such counsel as he could get among his own poor parishioners." The words must have been effective, to be remembered now, after the lapse of more than forty years. They were repeated to me by Dr. Amos Twitchell, of Keene. Judge Smith used to say, that Mr. West, when a widower, questioning him respecting two ladies of their acquaintance, he replied, that the one "loved to wait upon her friends, the other to be waited on by them." Mr. West married the former; the other also was married, and the result of the two marriages, Judge Smith thought, showed the wisdom of his friend's choice.

[1] This, like every other very pointed expression, must be received, as it undoubtedly was by Judge Smith, with some qualification. "It should be," says a high legal authority, "in civil cases some risk had better be run of deciding a cause wrong, rather than not to decide it at all, or even very unreasonably to protract the controversy."

certainly," he added, "he must have been destitute of piety, who did not return thanks to Providence, when he found himself and his horse safe on the further side." When he came home, worn down by a laborious circuit, he usually refreshed himself for a week or two, by reading novels, or any other species of light literature that might be within his reach. The remainder of his vacation was spent in constant application to the severe studies of his profession, reviewing his decisions, examining legal questions on points reserved for the purpose, extending his knowledge to the less frequented departments of the law, enriching his mind with the principles of legal science, to be drawn from theological investigations, or an enlarged acquaintance with history, and doing all this with reference to a better system of legal practice and a better administration of justice. He went scarcely at all into society, and sometimes for weeks was hardly seen without the doors of his own house. Almost his only relaxation was with his own family. It is impossible for those who did not know him in his own house, to have any idea how much amusement he could extract from the most trifling events; and how much incidents, which others leave as unworthy of notice, were made to contribute to the animation and real enjoyment of the whole household, while they had no small share of influence in preserving the vigor and elasticity of his constitution. It was a saying of Paley, that "he who is not a fool half the time, is a fool all the time." And the reader probably remembers the story of Robert Hall, who, on being reproached by a very dull preacher with

the exclamation, "How can a man who preaches like you, talk in so trifling a manner?" replied, "There, brother, is the difference between us; you talk your nonsense in the pulpit, I talk mine out of it." Judge Smith used often to tell, with great zest, the story of Dr. South, I think, who, in the midst of a frolic, seeing an acquaintance approaching, exclaimed, "Stop, we must be grave now, there is a fool coming." Certainly no one without a true relish, not only for wit, but for fun, can at all appreciate Judge Smith's character, or fully understand even his more serious conversation and writings. His humor, like the foam and phosphoric light in the wake of a man-of-war, often marked the progress of his mind through subjects the most profound, and in his moments of relaxation it burst out and flashed in all manner of antic and fantastic shapes. He would, for instance, amuse himself and family, by imagining them in strange situations, with people perhaps the most incongruous, and then would carry on, with the drollest effect, long conversations between the persons thus grotesquely brought together. Sometimes the assumed names would be preserved, and the farce or romance kept up for weeks together, as if it were a fact connected with their daily life.[1]

[1] The most undignified instance of his love of fun, that has come to my knowledge, was told me by the Hon. Levi Woodbury. An old physician, imprisoned in Exeter for debt, was in the habit of making frequent and long calls on Judge Smith, whose house, unfortunately, was within the limits of the jail. One afternoon, the judge, seeing his venerable friend coming, threw himself, as if in great pain, on the floor, and word was taken to the door that he could see no one. The doctor, suspecting how the matter was, said he could not possibly abandon his friend at such a time, and, rushing into the room, threw himself down by his side. The appli-

If there was anything in which he showed himself a man of genius, it was in the humor which flashed out through every feature of his mind and face. In the tone of his voice, the roguish play about his mouth, and the fire of his eye, there was an undefinable something which gave relief to a dry discussion, and imparted at least a momentary zest to expressions, which might, otherwise, have fallen lifeless from his lips. He did not require wit or intellectual superiority in his daily associates. He was always fond of the society of ladies, and no one could respect them more than he; but the gentle and amiable qualities, united with intelligence and good sense, were what most engaged his affections. It might be said of him, as of Lord Mansfield, that "his professional labors were great, and it was natural that he should resort to society more for relaxation and rest of mind, than for anything that could put him upon fresh exertions. Even dulness, so long as it was accompanied with placidity, was no absolute disrecommendation of his private hours; it was a kind of cushion to his understanding."

These, however, were but moments of respite from severe labor. The only regular exercise that he took, was in sawing, splitting, and bringing in the wood for his fire; employments which he kept up till the last years of his life, and which he always performed with great exactness. These things undoubtedly contributed much to the soundness both of his body and mind, but he was taxing his constitu-

cation was perfectly successful, and the patient was soon able to sit up; but the physician, *fearing a relapse*, continued with him till evening.

tion beyond his strength. His friends saw that he was wearing himself out, and he evidently thought that his life must be a short one. His letters often speak of this, and sometimes, though very seldom, show something of the low spirits that are connected with disease.[1] They furnish little information respecting his professional pursuits; but afford glimpses of his peculiar mode of thought and feeling, as in the following extracts from letters to William Plumer, then a senator in congress, and afterwards governor of New Hampshire.

Exeter, November 21, 1803. "My dear friend: I received yours of the 3d of November, a few days ago. I am much better for the fall circuit. This I ascribe to my devoting myself less to the business of the court than usual, and more to riding on horseback. I do not intend to engage in any law study this vacation, as I am determined not to think much, and yet abhor idleness as much as nature does a vacuum." February 11, 1804. "As to myself, I have too much zeal, for the crazy house of my tabernacle. Whatever my hands find to do, I do it with all my might, and I find that continued, unremitted attention, for a considerable length of time, fa-

[1] From a letter to his brother Samuel, December, 1806: "He might have added that I am now forty-seven, with a sickly constitution, in an office which does not maintain me, and with a family the most helpless in New England. You see I am not in good spirits; I am sincerely glad you are. I hope they will continue, and that your endeavors will be crowned with success. I hope this on your own account, on account of your wife and children, and on account of my own. As to myself, it is of little consequence what becomes of me: and I have no doubt, as long as I live I shall have meat to eat, and raiment wherewithal to be clothed."

tigues me more than it did a few years ago." January 1, 1805. "I intended a winter of leisure, but I find as much difficulty in spending my time idly, as some others do in exertion. In my conscience I believe I am doing no good, and yet I am, under the influence of this conviction, all the time doing. What a mercy it is that I am not addicted to drinking, gambling, horse-racing, cock-fighting, (you see I speak to you as a southern man,) or any other such like vices, for I am sure I should never leave them off, as long as I had liquor, cards, and money or credit, horses, cocks, &c. Some evil genius has been for years stirring me up, to look a little into the science of pleading; and my powers of resistance at this time happening to be weaker, or the temptation stronger, I have done, as good men have done before me, yielded, and am now enveloped in counts, bars, replications, estoppels, traverses, &c. You will say, and say justly, 'what the deuse has a New Hampshire lawyer or judge to do with special pleadings?' If he acquires any knowledge, standing alone, he will have nothing for his pains but mortification. He must be disgusted with every record he hears read, and can never hope to reduce our horrible jargon into form or shape. All this is true. Surely there must be something in destiny, which you know it is in vain to resist. I can no more help trying to be a special pleader, than Cocke can help being an able statesman, or Sam Smith a modest, unassuming, correct senator. Our destinies will have it so. I mean, however, that you should consider all this as an apology for not writing

often, and when I do write, writing *a la mode* special pleading, as it respects entertainment."

It is not in my power, indeed it hardly belongs to a personal biography, and would not be interesting to the general reader, to trace minutely the changes which Judge Smith introduced into the administration of the law. "With him," I use the words of the present able chief justice of New Hampshire, "there arose a new order of things. Those members of the bar, who were diligent and attentive to their business, were commended and encouraged, and those who were negligent were lectured and reprimanded. There was, of course, greater preparation on the part of the bar, and greater investigation and deliberation on the part of the bench. A general practice was very soon adopted, for but one judge to charge the jury in each case.[1] Points of law were ruled, and cases saved for more thorough examination. New trials were granted for errors in matters of law, but when this practice began, the rule was to grant no new trial for any such error where the case was open to review.[2] There was, in the outset, con-

[1] In a letter to William Plumer, 11th of February, 1804, Judge Smith says: "I am just returned from Portsmouth, not a little fatigued. A. Livermore did not attend. I do not know how it is, but it really seems to me that there is no use in having a court that try causes with a jury, to consist of more than one judge. Our friend W. H. A. is chafed in his mind, and the venerable old judge grows more and more indifferent to the business of the court."

[2] The first intimation of a change in this respect, arose in a case where a young woman, who was possessed of some property, died at the house of a brother, who was worthless; and he, without any authority, took a promissory note which belonged to her estate, presented it to the maker, and received payment. The father, who was entitled as heir,

siderable opposition to this correction of errors, but it was sustained. Manuscript reports of that time have, it is understood, been preserved, but have never been given to the public."

Before Judge Smith, there had been, on the part of the judges of New Hampshire, little attention given to the law as an established science. The justice of the case was held up as the law of the case; and the jury were to judge both of the law and the fact. Of course there could be no uniformity in the decisions. There were no fixed principles; but each case must have been decided according to the impulse of the jury, who could have no rule but their own fluctuating ideas of justice. It is not difficult to see what a door must have been left open for all the arts of the profession, the passionate appeals, the low cunning, through which law is neglected and justice set aside.

Judge Smith required a strict attention to the law, even in its minute forms; wisely judging that severity, even in technical matters, though sometimes it might bear hard on individual cases, was yet the only secure preservative of justice. Exactness in form,

took administration, and brought an action against the maker of the note, to recover the money, on the ground that the payment to the brother, who had no authority to receive it, constituted no discharge. The court so charged the jury, but they returned a verdict for the defendant; and the foreman, upon being asked on what ground they brought in such a verdict, said he thought if a man paid his note once, that was sufficient. The action was reviewed, and on the trial of the review, Chief Justice Smith said, had a motion been made, he should have been induced to set aside the former verdict, the case was so strong.

leads to exactness in the whole mental discipline, and they who are deepest in the principles of a science, are always among those who are the most exact in its details. No warrior was ever more exact or exacting in all that belonged to the minute discipline of each soldier than Napoleon, and it was this exactness in details that enabled him to carry out, in a battle or a campaign, the large and comprehensive rules of his science. So it must be in every department. General knowledge is but another name for general ignorance. In order to be of any practical use, knowledge must be particular, minute, and exact; and never more so than in the application of legal principles, where so many warring interests and prejudices come in, to turn justice aside from its true ends. Technical rules and forms are the defences which have been thrown, by the wisdom of ages, around the pure abstractions of the law, to guard them from human infirmities, and secure them in their administration from the influence of fear, enmity, compassion, and whatever other momentary impulses might interfere with the straightforward course of justice. These were the views entertained by Judge Smith, and which, in his judicial character, he labored earnestly to practise and enforce; and with such success, that before he left the bench there was probably no state in the union where the law was more strictly administered.[1] In-

[1] Mr. Webster has been heard to say, that having practised in many courts, beginning with that of George Jackman, justice of the peace for the county of Hillsborough, who had held a commission from the time

deed the matter was carried so far, that the New Hampshire practice has become almost proverbial for its severity, and has sometimes been held up as inconsistent with the courtesy that becomes the members of a liberal and highly respectable profession.

There may have been something in the early training of the great New Hampshire lawyers, which, while it brought out their strength, left them without the urbane accomplishments and graces, in their professional intercourse, which sometimes belong to those who have been born and bred amid the luxurious refinements of society. Their gigantic minds, grappling with hard questions, and powerfully moved by all that gives excitement to debate, could not always choose the most courtly words, and it is not impossible that, from fear of giving undue advantage, they may have been in the habit of yielding too little to what may be called the courtesy of the bar. But it may well be questioned, in the first place, whether the practice as a general rule, of yielding nothing which the law in its utmost rigor requires, is not the most favorable to the strict administration

of George the Second, and going up to the court of John Marshall, at Washington, he had never found a judge before whom it was more pleasant and satisfactory to transact business than before Chief Justice Smith; that he had known no judge more quick in his perceptions, more ready with all ordinary learning, or possessing more power to make a plain and perspicuous statement of a complicated case to the jury. He added, that with Chief Justice Smith, industry in preparation on the part of the counsel, research into the points of law, and a frank and manly presentment of the whole case, placing it upon its true merits, without disguise or concealment, would go as far for the maintenance of truth and justice, as with any judge he had ever known.

of justice; and secondly, whether this extreme severity, when once it has become the settled rule of practice, may not be perfectly consistent with the urbanity and kindness that should mark the intercourse of gentlemen, in all their relations.

But, while laboring to introduce a practice conforming to strict technical rules, Judge Smith held always in great contempt those lawyers[1] who, unable to grasp the law in all its length and breadth, would seize on some of its minute forms, and make everything yield to them. We have seen how large and generous were his views of legal culture. No branch of knowledge came amiss. With him the law was not a collection of arbitrary rules, to be learned by rote, and administered, each according to its own letter. It was a great and comprehensive system, proceeding from, and sustained by, the principles of universal reason, according to which, each and all of its provisions were to be interpreted and applied. It was only as springing from, and subordinate to, these central principles, that legal forms engaged his respect. He loved to observe the exact letter, only so far as it embodied the exact spirit, of the law; and among the records which he has left of his private thoughts, are these emphatic words — "If the world should be pleased to speak of me after I am dead, let them say, he was a judge who never permitted justice to be strangled in the nets of form."

The same general remark applies also to the esti-

[1] "Isti minuti philosophi," as Cicero calls the corresponding class of philosophers, unless the expression apply more properly to the class mentioned in the next paragraph.

mation in which he held the extreme refinements and subtle reasonings upon the law, which, with very acute minds, holds the same place as minute forms, with minds of a different character. He knew how to analyze an intricate subject, to throw aside that which is not essential, and follow with singular acuteness each particular fibre, from the topmost branch to the very root. He knew, also, that the most important questions turn sometimes upon an exceedingly small pivot. But he had great confidence in plain, common-sense views, and though highly entertained by the exhibition, (which he must often have witnessed at the bar,) of extreme logical ingenuity, he looked upon it as a perversion, rather than the legitimate use of reason, and always distrusted its results. After quoting Lord Eldon's remark, "There is no mistake so foolish, as to suppose a judge will not alter his opinion; I am sure it has often occurred to me, that I have set about to see if I could not alter my opinion,"— Judge Smith adds, "I have seen a judge laboring to alter his opinion. He often succeeded, and often from right to wrong, abandoning a plain, sound, common-sense opinion, for one merely ingenious, plausible, &c."

Another quality, for which Judge Smith was eminently distinguished on the bench, was his business talent. To this he attached great importance. "When men," he says, "have been considering the qualifications of a judge, it is astonishing that they should overlook experience in business. Who can tell how much it contributes to despatch? It greatly exceeds acuteness of parts, or, rather, the latter can

do little without the former." He required that every man connected with the court should be ready when his time came. By this habit of punctuality, by a more orderly and systematic arrangement of business, by seizing on the real points at issue, and excluding irrelevant matter, and especially by his own promptness and decision, he, without hurry or indecent haste, did much to avoid the wearisome delays which often clog the wheels of justice, and bring upon it so heavy a reproach.

Judge Smith always paid particular attention to young men; and there are many who gratefully acknowledge their obligation to him, for the encouragement he gave them as they were entering upon their profession. Perhaps the circumstances under which he was himself introduced to the bar, had always some influence upon him; but he had from nature, I believe, a warm sympathy and fellow-feeling for the young. He loved to watch their progress, and where he saw marks of real promise, could easily bear with the indiscretions that arise from want of experience, and the irregularities that proceed rather from the superabundance of animal spirits, than the superfluity of naughtiness. He was ready to pardon much to the ebullition of youthful feeling, provided that he saw, underneath, ingenuousness of character and a purpose of self-improvement. There was nothing on which he more, or perhaps more justly, prided himself, than the faculty of reading, in its early developments, the man's future history.

At the court holden in Hillsborough county, in 1806, a young man who had been admitted as an

attorney but not as a counsellor, appeared with a cause of no great pecuniary importance, but of some interest and some intricacy. Though not then of such advanced standing at the bar, as to be entitled to address the jury, he was yet allowed to examine the witnesses, and briefly to state his case both upon the law and the facts. Having done this, he handed his brief to Mr. Wilson, the senior counsel, for the full argument of the matter. But the chief justice had noticed him, and on leaving the court-house, said to a member[1] of the bar, that he had never before met such a young man as that. It was Daniel Webster, and this was his first action before the court.

It should be noted, however, that Judge Smith had, before this, a long and friendly acquaintance with Mr. Webster's father. They had known each other in the times of the revolution. They had been together at Bennington; and when Ebenezer Webster was made a judge of the court of common pleas, about the year 1791, he became a member of a court, before which Judge Smith practised many years in the earlier part of his professional life. Judge Webster was, according to all accounts, a man for whom strong good sense, integrity of purpose and activity of mind, had done whatever those qualities can do to fit a man to be a judge who yet wanted a suitable education for judicial employments. He entertained the most exalted opinion of Judge Smith, and was one of his warmest supporters during his continuance in congress. It may be, therefore, that Judge Smith's

[1] General James Miller, to whom I am indebted for the anecdote.

prediction of the future eminence of the son, was strengthened by his feeling of friendship for the father.[1]

The character of Judge Smith's advice to young lawyers may be understood from the following paragraphs taken from his common-place book: "Many, very many leisure hours, has a young lawyer, before he can fairly and honestly get into practice. I say *honestly*, meaning honorably, for he may push himself in dishonorably, and will be sure to pay for it in the end —

[1] For the account I have here given of Judge Webster, as well as for his kind and important assistance in many ways, I must acknowledge my obligations to George Ticknor, Esq. A speech by the Hon. Charles H. Warren, at the dinner of the New England Society, in New York, December, 1844, contains some further interesting particulars respecting Judge Webster. "In the olden time," so the speech is reported in the newspapers, "there was a man in New Hampshire, who in his youth was 'bound apprentice,' as we call it there, to a farmer; and the farmer was bound by his covenants to give him three months' schooling in the year — a good old Yankee custom, and I trust one also in New York; but unlike Yankee masters in general, he failed to give the boy an hour's schooling, and he never had one till the day of his death. In the old French war of 1756, this boy entered the army as a private, and he fought himself up to a commission, first as a warrant officer, then as an ensign, and upon the peace of Paris, in 1763, he left the army, came home, and his first act upon his return, was to bring an action against his master for a breach of his covenant in not sending him to school. (Laughter and cheers.) And the master compromised his claim and gave him a tract of land that is the family homestead now. The war of the revolution came, and this same man now a captain of militia, went with his company to West Point, and was there at the time of Arnold's treason. And two nights after that treason, he stood guard before Washington's head quarters, and the next morning Washington thanked him in person for his vigilance and fidelity. Well, that man has left a son, and that son has often mounted guard since, when he thought treason was working in the American camp. The father's name was Ebenezer Webster! (A spontaneous and tremendous mark of applause — waving of handkerchiefs and most enthusiastic cheering.) I see it needed no prophet to tell what the son's name was! (Renewed cheering.)"

in loss of fame, friends, and even loss of business. Let these leisure hours be spent in acquiring knowledge; he need not be afraid of having too large a stock for his business, when fairly introduced." In another place, after quoting the maxim, "he that would climb a tree must grasp by the branches, not by the blossoms," he adds: "No man ever became distinguished as a scholar, a statesman, or a professional man, who felt no other stimulus than the present pleasure derived from his studies. The pleasure is the reward, the consequence rather than the efficient cause. He must not follow where pleasure leads, but ambition must prompt and judgment direct. *Pro pretio labor est; nec sunt immunia tanta.*

> All noble things are difficult to gain,
> And without labor, none can them attain.

"He who says, *Vivamus, mea Lesbia, atque amemus*, will never be a scholar, statesman, nor lawyer, whatever else he may be."

"To the young lawyer — Have you more acuteness, genius, mind, knowledge, than Parsons? Yet who was more indefatigable in his profession, and in the acquisition of knowledge? If I must choose for my son, between genius or great talents, and industry, I shall not hesitate a moment in my choice of the last."

Then, in reference to the observation that to some beings the bounty of nature dispenses with the usual steps to excellence, and instinctively supplies what the most painful study can rarely reach, and never

surpass, he says: "Nature does a great deal of mischief, in these occasional freaks. The vanity of thousands, and some of them, clodpoles, whispers to them, 'thou art the man,' instead of 'thou art the clodpole.'"

The following is dated 29th September, 1825. "Great things may be accomplished in a short time where the disposition is good, and the understanding apt. You must shake off your indolence; begin by making yourself master of your profession, and as soon as possible acquire the habit of attention. Furnish your mind, enlarge your experience. One would think the genuine passion of love for a deserving woman could not fail to whisper this advice, and prevail. He must be far gone in indolent habits who is insensible to such promptings."

What follows, was written when he was nearly eighty-two years old, and shows the feeling with which he entered upon his profession, and which continued to the end, so true is it that the most useful and honorable lives are those which begin with the highest purposes. "The oath of a knight, never to sit in a place where injustice shall be done, without righting it to the utmost of his power. J. S. took this oath in early life, and hopes he has in some good measure kept it. Let not this be called vaunting. Remember his life is about closing, and he, in a worldly sense, a disinterested witness." In a passage, written nearly ten years before this, he says: "I don't know whether I can with propriety say it, but I can't help saying, that I was endued with strong feelings of abhorrence to injustice, and of resistance to oppression, and I am

very sure that motives of a personal nature have very seldom, if ever, operated to prevent the expression of my honest and independent sentiments and opinions. In these things I am afraid that I cannot lay claim to temperance of mind, or feelings well balanced."

Judge Smith's charges to the grand jury, which are written with great simplicity, are full of sound practical instruction, relating to the nature of the laws, the way in which they were to be administered, and the best means of securing and advancing the public welfare.

"Laws," he said at a time when the doctrine was not so fully admitted as it now is, "should be mild; where punishments are mild, shame follows the finger of the law, but where they are severe, there is a sympathy excited for the offender, and he is viewed as a martyr to arbitrary power. Experience has abundantly proved, that mild laws are more efficacious than severe ones, and that rigorous punishments tend rather to produce, than to prevent crimes. Laws should be few in number. Legislation may be carried too far. Every unnecessary[1] restraint is tyrannical and unjustifiable, for every member of the state

[1] "A land may groan under a multitude of laws, and I believe ours does, and when laws grow so multiplied, they prove oftener snares, than directions and security for the people."— *Lord Shaftsbury.*

"The senate of the Areopagus, once punished a senator for stifling a little bird that had taken refuge in his bosom. It was considered a crime against humanity."— *Anacharsis.*

"Corruptissimâ Republicâ, plurimæ leges."— *Tacitus Annal. III. 27.*

Judge Smith always thought, that our great danger lay in legislating too much.

is of right entitled to the highest possible degree of liberty which is consistent with the safety and well-being of the whole." But however excellent the laws, they will be of no avail unless faithfully executed. "The certainty of punishment is more efficacious to prevent crimes, than the severity of it.[1] Among some it has been a favorite opinion, that political freedom consists in an exemption from the restraints of law. There cannot be a greater error. If the laws are not strictly executed, they will soon be totally disregarded; and where the laws do not govern, depend upon it, the will of a despot or despots, (for there may be more than one at a time,) will govern. 'Amid the clashing of arms, the laws are silent;' the converse is also true, that when laws are silent, arms will be heard, and they will be obeyed. Grand juries are sometimes deterred from presenting infractions of the law, by personal compassion; but they ought to remember, even if they forget their oaths, that private and individual compassion is oftentimes general cruelty. Let there be abundant clemency in the code of laws, and mercy lodged with the supreme power in the state; but let courts and juries faithfully execute the laws, which is the trust more especially confided to them. I conclude, gentlemen, with repeating my belief that you will conscientiously discharge the duty incumbent on you, at this term, by presenting all offences that may come to your

[1] "So rigorous were the forest laws of France, that a peasant, charged with having killed a wild boar, alleged as an alleviation of the charge, that he thought it was a man."—3 *Bils. Lec.* 15.

knowledge, truly and impartially. Like perfect historians, you will not fear to say anything that is true, nor dare to say anything that is false; but will so act in every part of your office, that the innocent may approach this tribunal without apprehension of danger, and the guilty leave it without complaining of injustice."

In respect to banishing men, as a punishment, he says: "We are more given to importing, than to exporting; and it is easy to see that the balance of this species of trade is very much against us. It is natural, perhaps, that those who have escaped from the jails in Europe, should be fond of liberty when they come here, and that those destitute of morality, should endeavor to cover their deformities with the mantle of patriotism, which, like charity, covereth a multitude of sins. But it was not to have been expected that men, whose highest claim is to our sufferance, should venture to interfere in our councils, and dictate to us in the management of our affairs."

The following paragraph, from the charge delivered in the spring of 1804, is marked "omitted in the delivery": "False and malicious writings against men in office, deserve the reprobation of all good men, and the severest chastisement of the law. Justice, like a guardian angel, should watch over the pillows of the men whose lives are devoted to the public service. Every blow levelled at their reputations and characters, if unjustly inflicted, is, in its consequences, injurious to the public. The character and welfare of the community, is intimately blended with the character of their rulers, and it is impossible unjustly to de-

fame the one, without doing essential injury to the other."

During the first two or three years that Judge Smith was on the bench, there was no crime to which he so constantly and earnestly called the attention of the grand jury, as forgery. It appeared, from the evidence in different cases, that gangs of counterfeiters made their head-quarters in New Hampshire, in consequence of the great mildness of the New Hampshire laws towards their offence. He often, and in the strongest language, speaks of perjury, "the attack on religion and law, in the very point of their union." "So atrocious," he says, "was this offence viewed, by the pious and moral settlers of New England, that in their first code of laws perjury was subjected to capital punishment." "It is a melancholy thing, that judges are often called upon to state to the jury, that a fact is not proved, because it is sworn to. We cannot help seeing, in men of some standing in society, a disposition to evade the truth, to practise cunning and ingenuity; as if there were as much merit in gaining a cause by ingenious swearing, as by ingenious argument."

At the time Judge Smith came to the bench, perjury was practised to a most alarming extent. There were men of apparent respectability, who made it their business to be witnesses, and to train others to testify as circumstances might require; so that it came to be understood that any one, unscrupulous enough to adopt the means, might procure for any case such testimony as he wished. In order to put down this alarming evil, the chief justice, in conformity with

what he believed the spirit of the English law, allowed the counsel, provided they were willing to take the risk, an unusual degree of severity in cross-examining witnesses. There was one man in particular, who attended the courts almost as regularly as the judges; a man of some property and of considerable talent and influence, whom it was exceedingly difficult to catch, but who, at last, after a cross-examination of many hours, was so completely broken down and exposed, that his testimony afterwards was of no value. Such a practice at the bar must have had its disadvantages, but in its effect was undoubtedly favorable to the administration of justice. Cross-examining is, however, a weapon, which, unless used with great skill and caution, is likely to fly back and wound him who uses it, more than his antagonist.

In the charge delivered in the fall of 1807, after speaking of the little attention bestowed upon the judiciary, compared with what is given to the other branches of government, he enters more particularly into an account of the arduous and painful duties of a judge, and adds: "To balance all these evils, and many besides, which every judge could add to the list, he is allowed to enjoy, pure and unmixed with the trash of this world, all the satisfaction which flows from a conscientious discharge of duty. This is, indeed, the most precious reward for labor; and society will generally take care that it shall be the *only* reward of a judge.

"The institution of juries is, however, favorable to judges, as well as to the administration of justice. Forty or fifty persons are selected, at every term, from

the most respectable inhabitants of the vicinity, to attend the court while employed in the exercise of its judicial functions. If they were mere spectators of what passes in court, they would be of great utility. The presence of so many respectable persons must have a beneficial influence over witnesses, and I have no doubt has been the means of preventing much perjury. The very countenance of good men affords no small support to a poor man struggling to obtain justice, against an artful and powerful antagonist, while, at the same time, it has some tendency to weaken the strength of the boldest transgressor. To the court, the presence of these respectable men is no less beneficial. If the judges are what the constitution requires them to be, skilful in discerning the path of duty, diligent, upright and impartial in dispensing justice, these men will be witnesses for them, and their respectable and impartial testimony, in a tolerable state of society, will, it may be hoped, far outweigh the misrepresentations of those who revile and hate the administration of justice, because they are made to feel the just effects of their folly and wickedness.

"But it is still better, when a considerable number of persons from the various parts of the country, are occasionally called to take a part in the administration of justice, civil and criminal, to bear a portion of that burthen, which will prove too heavy for any man to sustain many years. It is said that the safety of every free government requires that the virtuous part of the community should enjoy a certain weight in the administration. Is not this applicable to the judiciary? Without this popular intermixture, judicial decisions

would hardly give satisfaction; and of what utility would the wisest and most correct decisions be, if the majority of the citizens were dissatisfied with them? In short, gentlemen, I verily believe, that the wisdom of ages has never produced, and that the wit of man never will produce, anything so admirable, as the institution of juries, grand and petit, in the administration of justice. But, at the same time, it cannot be denied, that even this mode of inquiry, excellent and useful as it is, like everything of human invention, is not entirely free from defects. We can even conceive of its existing in such a state, as to be the worst tribunal on earth. The best things, when degenerate and corrupt, become the worst. And this would be true of juries, if not composed of suitable and qualified persons; if they should overleap their proper bounds, and if they should become negligent or corrupt, or even suspected of gross partiality in the discharge of their functions.

"In some parts of our country, (and in early times in New England,) it has been deemed proper for grand juries to notice, in their presentments, the operations of government, and to expose, at least to inspection, public men and public measures; to suggest public improvements, and the modes of removing public inconveniences. These presentments may sometimes have had a salutary effect, but I have no hesitation in saying, that the effect will generally be pernicious. If they sometimes aid a good government, they will at others, perhaps, thwart the best measures of the best government. If they sometimes denounce bad men, what security have we that they will always spare

the good? Their means of getting information are too limited to speak decisively on such subjects, and they will oftener express the sentiments and feelings of the party to which they belong, than the sentiments or opinions of the public at large. It is, besides, introducing politics into courts of justice, an evil which cannot be too carefully guarded against.

"With regard to the manner in which you ought to discharge your duties, it is not necessary for me to say much; your oath, which is the commission under which you act, is a good summary of your duty. But it may be useful, perhaps, to mention some of the temptations to which juries are most exposed, and the points on which they are most likely to fail of performing their duty. A jury, I speak of traverse as well as grand juries, is a popular body, and as such, must be exposed to suspicion of partiality, arising from local prejudices, popular clamor, and party spirit. The latter is not peculiar to these times, or our country. Wherever there is freedom, there party spirit will be found to exist, and where juries are summoned from the neighborhood, they will, they *must* bring with them into court, much of the sentiments and feelings of the people from whom they are selected. It requires no small share of virtue and vigor of mind, to rise above local prejudices and party spirit, to decide justly between a neighbor, and a stranger — one who has popularity on his side, and one who has the misfortune to be obnoxious. To be perfectly cool, when a cry has been raised, and the neighborhood is in a flame, falls to the lot of a few only. And, even if we should be happy enough to rise above all obstacles, and be

able conscientiously to discharge our duty, we can scarcely hope to escape suspicion.

"A few centuries ago, when sheriffs and attorneys were less correct in their morals than at this day, and when the sheriff returned the juries, it was a common article in an attorney's bill, to charge a certain sum for procuring the friendship of the sheriff, in the choice and return of jurors. Embracery of jurors, or the attempt corruptly to influence them to one side, was an offence often committed, and severely punished, and it is an offence still. It is, perhaps, natural enough, as human nature is, that parties, and especially those who have a bad cause, should endeavor to secure, by undue means, the favor of the jury. When jurors are applied to by parties, in this way, they should always understand that the party applying thinks as meanly of his own cause as he does of the uprightness, delicacy, and honor of the juror. To so great a height had these evils arisen at particular times and places, as almost to justify what was said by a good bishop, of the London juries, who seem at all times to have been peculiarly exposed to this external influence, — 'that they were so prejudiced and partial, that they would find Abel guilty of the murder of Cain.'

"I have had occasion to observe, during my attendance on courts, that popular causes are generally decided wrong, and the reason is, because law and evidence are not alone regarded. When a cause has been repeatedly tried, and become a subject of conversation, it is difficult to obtain a correct decision. Few, except court and jury, have the means of hearing the whole; many are not capable of judging in a

complicated cause which they have fully heard; yet all undertake to judge. No man objects to his own competency, or withholds his opinion. It requires a degree of firmness and manly independence, not very common, to resist what appears to be the general opinion of others."

"I have dwelt longer than I intended on the danger of partiality in jurors. I hope what I have said will be supposed applicable chiefly to former times and other places. I hope the picture I have sketched will bear little resemblance to anything which lately has been, or speedily will be, seen in this state. But there is a great evil in jury trial, which is of modern growth, and in a great measure peculiar to ourselves; I mean the frequent instances in which juries of trial disagree. It is well known to you, gentlemen, that when the grand jury is composed of twelve only, the law requires that they should be unanimous, and when the number is greater, there must be twelve, at least, agreed to find a bill, and that unanimity is always required in the traverse jury. It would be a matter of curiosity, for which we have no leisure at this time, to trace out the origin of this most singular institution — the principle of unanimity. It was not at once adopted, either in England or in this country, and it does not prevail in Scotland to this day. But it is sufficient for our present purpose, that it is now the law of this state. In criminal prosecutions this principle is favorable to the accused. If the offence is not proved beyond all reasonable doubts in the mind of the most scrupulous juror, it operates as an acquittal; but in civil suits it has lately, in practice,

occasioned delay, a great evil in the administration of justice; so true is the Eastern maxim, in many cases, 'that speedy injustice is better than tardy justice.' The modern method of trying causes, of itself occasions great delay. The length of the pleadings, arguments of counsel, &c., sometimes necessarily, and sometimes unnecessarily, protract the trial to a most unreasonable length. A late trial in this country, has occupied more than a month.[1] It is but a few years since an adjournment was first permitted in the trial of a cause. The disagreement of juries adds greatly to the evil. In fifty trials within the last five years, the jury have not agreed. Those have generally been causes where the expense of a trial has been considerable; to the parties concerned, it has amounted at least to five thousand dollars; and to the other parties who have causes in court, and to the public, the extra expense has been still greater. I speak much within bounds, when I say the whole expense has been a greater sum than the whole judiciary department has cost the state during the same period. Most of the causes where this disagreement took place, were those where local prejudices and public opinion have been suspected of having had an undue influence. Real difficulty in the question to be tried has seldom prevented a verdict. Some of the causes to which I allude, have been tried five or six times. With the court, I trust, there has been no cause for disagreement of the jury. It has always been their uniform endeavor to declare the law, to

[1] The trial of A. Burr, in the circuit court of Virginia.

make it intelligible to the jury, and to assist them in judging of the facts. It is remarkable that the greater number of the causes where the jury have not agreed, have been such as might have been reviewed, of course. Both parties, therefore, would have been gainers by losing the cause when the jury had so disagreed. There have been instances, within my knowledge, where the party finally prevailing, after repeated trials, in which there has been no verdict, would have been a gainer by losing the cause at the first trial, supposing that trial to be final."

The great subject however, beyond all others, on which these charges, from beginning to end, insist, is the importance of public schools, and of moral and religious instruction. "The race of man," says Judge Smith, in his first charge, "cannot be happy without virtue, nor actively virtuous without freedom, nor securely free without rational knowledge and education. Everything cannot be expected from mere forms of civil government, though one form may be, and undoubtedly is, preferable to others. Great expectations have been raised of an end being put to wars, and of brotherly love and universal goodwill prevailing in the earth, by the mere exchange of monarchical forms of government for republican and democratic, and from the illuminations which philosophy is supposed to be shedding on this age of reason. But it has been found, on experiment, (the surest touchstone of political opinions,) that the state of society and the condition of mankind have not been much improved by political revolutions. Like earthquakes and tornadoes in the natural world, they

serve to convulse society, and too often overwhelm in their ruins the most virtuous portion of the community. They do not make good men better, but bad men worse. It is worthy of remark, that those who have been predicting this political millennium, this peaceable state of society, which is to flow from mere forms of civil government, have been, in fact, the greatest disturbers of mankind; and the boasted philosophy of the present day has been found, on experience, better calculated to weaken the bonds of society, than to unite mankind in brotherly love and affection. The world is not to be regenerated by political revolutions, nor by the dogmas of infidel philosophy.

"The sum of the whole is, that while we faithfully discharge our several duties of jurors and judges, in impartially executing the laws, we must cherish our religious institutions. Disregarding all trifling distinctions among professors of the same faith, (for such will always exist,) we must cling to the Christian religion, as our only sure and steadfast anchor of hope. It is peculiarly our duty to do so at this time. We live in an age fond of liberty, but impatient of those salutary restraints of law which alone make liberty either lasting or valuable. We have a constitution of government, the best formed to insure peace and happiness to the subjects of it. But governments, like the individuals of which they are composed, have their imperfections and defects. They have all, hitherto, proved mortal. Those formed on the principles of freedom and justice, have not been hitherto exempted from the general destruction. They have perished, like the

rest. Indeed, we have the mortification to learn from history, that the freest governments have been of the shortest duration. Like some of the fairest flowers, they are the most easily destroyed by the rude blasts of popular passions. Let ours be built on the solid foundations of religion and morality, and when the rains descend, and the floods come, it shall remain unmoved, because founded on a rock."

He urges again and again, the necessity of enforcing upon towns the laws requiring them to make provision for public schools. And, notwithstanding all that has been done, this is a subject on which, as members of a free community, our citizens now, especially some among the rich and learned, do not bestow the attention which its importance demands. They forget that the security of property, and their position in the midst of a peaceable community, must depend on the education of the masses, whom, with a contempt, which argues as little for the soundness of their minds as for the kindness of their hearts, they would shut out from all but the lowest branches of knowledge. Judge Smith looked upon the subject with the eyes of an enlightened wisdom.

In his charge for the spring circuit of 1807, he says: "It is hardly to be expected that private individuals, in towns which are negligent, will bring forward prosecutions. Some of the rich are so sordid as to think that the money laid out in educating the children of the poor, is money ill bestowed. The ignorant are doubtless ignorant of what they, as members of the community lose, by the neglect of maintaining schools. It is not even to be expected that the youth for whose

immediate benefit these wholesome regulations are framed, can be fully sensible of how much importance it is to the community at large, that they should be early instructed in those principles of good manners, good morals, and useful knowledge, which are to be acquired in every well-regulated school. With whatever disdain the pride of learning may look down on the scanty information which town schools can convey, men of benevolence and good sense, and I may add, all true republicans, will never consider any degree of knowledge as trifling, which tends to civilize and humanize a nation, and to fit it for the enjoyment of free government. Where the people are ignorant, the government *must be* despotic; and it is certainly true that the welfare of a nation depends much less on the refined wisdom of the few, than on the manners and character of the many. This is particularly true in republics, for we have no security that the wise few will have any influence at all with the ignorant many."

Religion and virtue he regards, everywhere, as the pilars of our govern ment; and omits no opportunity of recommending them, and whatever may conduce to them. "My design, gentlemen, in making these observations, is to impress on your minds, the importance of cherishing our religious, moral, and literary institutions. In your office of grand jurors, you are censors of the public morals and manners. In that character, in common with all in authority, it is your indispensable duty to lead the way to every design to meliorate and improve the state of society. It is an obvious truth, that example is more seductive, more

powerful than precept. It will, perhaps, be too much, after using all the means in our power, to expect that we shall be able to reduce the tumultuous activity of mankind into absolute regularity, but something may be done, and good actions and good sentiments will not be totally lost; if they do not benefit others, they will benefit ourselves. We may at least hope that they will in some degree lessen the necessity of inflicting punishment on our fellow-creatures, and that they will have some tendency to secure to us the blessings of liberty and a republican form of government, and enable us to transmit both to our posterity."

"A society which has no other method of promoting virtue, but by punishing offences when committed, will have a great many punishments to inflict. The gallows will be crowded with victims, and the executioner's axe constantly wet with blood. The great object of government, in all their institutions, should be to prevent the commission of crimes. Our institutions of a literary, moral, and religious nature, are admirably calculated to produce these effects. But they must not be neglected, they must be carefully and assiduously cultivated and cherished. An experiment has been lately made on the great theatre of the world, of governing mankind, under a republican form of government, without the aid of religion; and how did this experiment succeed? Just as all such experiments will ever succeed, till the nature of man undergoes a radical change. Republicanism is an excellent form of government, but it cannot supply the place of religion and morality. Indeed, it requires a double portion of both. A good monarch may govern well

a vicious people; but a vicious people under the republican form, must have bad governors. It is to be presumed that they will choose to have laws and an administration like themselves.

"Virtue is the foundation of republics; it is the corner-stone. We are now, as far as I know, the only people on earth endeavoring to maintain a government which, in every department of it, emanates from the people, which, in every feature of it, is democratic. It is a solemn consideration! And I wish to leave it with my fellow-citizens, as my fixed and decided opinion, that the experiment we are now making will turn out like all others that have been made, if we do not cultivate and improve our minds and social affections by education and learning, and our morals, by the pure principles of sound morality, and above all, by the mild and gentle influence of that 'religion which cometh down from above, which is pure, peaceable, and full of good fruits.'"

What follows is the close of the last charge that he gave to a grand jury, before retiring from the bench, in 1809: "From this brief review of our criminal code, gentlemen, I think I am warranted in saying, that it ought to be carried into strict execution. For it is so agreeable to reason, that even those who suffer by it, cannot charge it with injustice or cruelty; so adapted to the common good, as to suffer no folly to go unpunished; and yet so tender of the infirmities of human nature, as never to refuse an indulgence, where the safety of the public will bear it. It gives the government no power but of doing good, and restrains the people of no liberty but of doing

evil. This code of laws, and your office, gentlemen, are the means employed by society to compel men to become orderly and peaceable members of the community. They are an address to the fears of men, when better principles have lost their influence upon the heart and conscience. But it is always to be remembered, gentlemen, that punishments by which innocence is protected, do not give habits of morality. They are inflicted to put a stop to the consequences of vice, but they do not remove the cause. If all, or even a majority of the people of a state were ill-disposed, the infliction of punishment would aggravate, instead of curing the distemper. The sight of a jail, or even of a malefactor on the gallows, will not make industrious a man who is inured to idleness, or give sentiments of honor to one practised in dishonesty. There have been many thefts committed under the gallows, during the time of a public execution. A code of penal laws, however excellent, is by no means a power adapted to extirpate the depravity which pervades a great portion of mankind. It corrects the distemper, but does not eradicate it. This can only be accomplished by the Christian religion, which is a part of the common law of this state, and by far the noblest part. Its excellency and utility are expressly recognized in our constitution. Christianity is, indeed, the most benevolent system that ever appeared among men. It breathes love and charity in every precept. It has an obvious tendency to check and restrain every malevolent and irregular passion, to strengthen and establish every benevolent, every virtuous principle,

to exalt and perfect our reasonable natures, and to promote peace and good-will among men. Its influence on the welfare of society has never been doubted by any wise man or able statesman. The father of his country has said, and said truly, that it is the greatest pillar of human happiness, and the firmest prop of the duties of men and citizens. In short, religion is as well calculated to promote happiness in this world, as in the next. The pillars of government — of a free government, must be laid on the fundamental principles of religion, or the fabric will never stand. It will degenerate into despotism, on the one hand, or anarchy and licentiousness on the other. It follows, that our institutions[1] of religion, learning, and discipline, must be fostered and encouraged by the legislature, by courts of justice, and by all good citizens, and especially by those in office, by those who have influence in society, and by none more than by the respectable men who compose the grand juries; who, while they labor to bring to condign punishment offenders against the law, will with pleasure promote every institution which has a tendency to prevent the commission of crimes. Virtue and industry are articles that can be manufactured, and the stock increased, at pleasure. It is surely better to reform mankind, by giving them good dispositions, than to punish them for having

[1] "With respect to the Sabbath, in particular, it has been said, and, I believe justly, that it is an institution of great political consequence, if it were nothing more, and that there is a very exact proportion between the vices and immoralities of a nation and its relaxation or indifference in the observance of the Sabbath."

bad ; to make them good citizens, and useful members of society, rather than shut them up in prisons, or take away their lives."

I am aware that in these quotations there is little which can now strike the reader as new. They were written forty years ago, and the progress of opinion, imperceptible in the daily passage of time, appears distinctly marked, when examined after an interval of so many years. The leading characteristic of these charges is their sound practical wisdom. I doubt whether they contain a single suggestion of any moment, which experience has not confirmed ; and this will be deemed no mean praise, when we remember that they are not made up of solemn truisms, but that many of their assertions were in advance of their time, and, when first uttered, startled men by their novelty and boldness.[1] Much of what they contain relates to temporary matters, and its value has passed away with the abuses they were intended to correct ; but much still remains, as fresh, as important, and as worthy to be repeated and enforced, as when the government was first established.

I have now said the little I am able to say of Judge Smith's conduct upon the bench, endeavoring to show how his influence was exerted, rather than

[1] The following passage, for instance, produced, I am told, a strong sensation among the religious part of the community, as setting aside what they had been accustomed to consider the fundamental reason for the laws against profane swearing, blasphemy, and the profanation of the sabbath. "Society does not punish these merely, if at all, because they are offences against the Deity, for he can, and assuredly will, avenge himself of his enemies, but because they are of evil example, and attended with pernicious effects on society itself."

what he actually accomplished. His judicial decisions, the appropriate monument of his learning, industry, and intellectual power, having been prepared for a generation that is passing away, and not having been published so as to take their place among the authorities of the time and perpetuate themselves in other decisions growing out of them, could not now give a fair idea either of what he was, or what he did, as a judge. His works, like the last year's dew and rain, have gone into other forms, and will continue to act where their influence is least recognized, in the more healthy tone and structure of society. It is a blessed thought, that the labors of the wise and true are not confined in their results to what the eye may see, but by the unseen hand of Providence are led on to issues of a vastly purer and more extended good. Little can the ocean know of the distant fountains from which its waters are supplied, and little can the fountains tell either what blessings their pure streams may dispense in their progress, or what an ocean they may fill.

In one of Judge Smith's latest writings he has given, in a half imaginary sketch, his idea of a judge. "I have often," he says, "indulged my imagination in drawing a picture of Washington on the bench of justice, supposing opportunity and inclination had allowed him to acquire a competent knowledge of the law. Everything in and about him was judicial. A fine, graceful, and manly person — his manners reserved, though far from stern and forbidding. Candor and moderation are essential ingredients in the judicial character, and they were his in an emi-

nent degree. He would have been far removed from the political judge, seeking popularity from his judicial decisions, and estimating the politics of parties before him, as ingredients to be weighed, as well as the evidence before him. His independence and impartiality would have soon been felt and acknowledged, even by the parties, as well as the spectators of the scene. His fortitude, firmness, and inflexibility, as they are much wanted on the bench, so they would never desert him for a moment. His utmost diligence would be employed, in investigating the evidence and the rule of law applicable to the case. He was exemplary for patience and prudence, and, when necessary, he could reprehend as well as praise. His strict regard to truth, his spotless integrity, his enlightened and liberal principles, his regard for the institutions of religion, morals, and education, his great purity of heart, his delicate and scrupulous sense of honor and honesty, — all these qualities would have placed him among the first, if they had not made him the very first, of judges."

It would be difficult to find two men more unlike, in many respects, than Washington and the man who has given this sketch of his character. Yet in Judge Smith might be found, with some trifling exceptions, and combined in different proportions, all the qualities which he has here ascribed to that extraordinary man. His countenance and bearing, though entirely unlike those of Washington, and often relaxed into the most humorous expression, were yet those of a man whom it might not be safe to approach with anything like disrespect. His keen

and penetrating eye, his whole bearing and deportment, were such as to give the impression of a mind, that "looked quite through the deeds of men," of a lofty independence, a proud consciousness of integrity, a courage, an inflexibility of purpose, to be moved neither by the hope of gain, by flattery, nor threats. It is possible that his wit, while it sometimes enlivened a dull cause, may also at times have exasperated a dull advocate, and that, by taking something from the apparent dignity of the judge, it may also have taken something from the apparent weight of his opinions.[1] Notwithstanding the quickness of his perceptions, and his ardent temperament, he was remarkably dispassionate in the trial of causes, and distinguished not more for his acuteness and learning, than for the soundness of judgment, the candor, moderation, patience, and diligence, with which he went through with laborious and protracted investigations, whether relating to the evidence, or the rule of law applicable to the case. But it may be questioned whether, after having satisfied himself, he was always equally patient in bearing with the te-

[1] He was distinguished for his uniform courtesy to all the members of the bar, but in a few instances could not refrain from indulging in some little pleasantry at their expense. On one occasion, it is said, just as the lawyer was rising to argue his cause, the judge laughingly proposed, that he should let it go to the jury without argument; "for," said he, "your cause is a good one, and I have no doubt the jury think so too. I am not quite so clear they will continue to think so after you have argued it." On another occasion a young lawyer, more conceited than wise, said, "May it please your honor, the prisoner is underwitted. Surely you will assign him counsel." "Yes," replied the judge; "but then it must be such counsel as may be of service to him in that regard."

dious processes required by slower minds, in arguments at the bar. I have the highest authority for saying, that, however decided he may have been in his views of a case, he was remarkably free from the imputation of ever assuming the part of an advocate, when charging the jury.[1] No man, who understood anything of his character, could hope to have the least influence with him, through his political opinions. On that ground, no charge was ever seriously brought against him; and the large vote by which his salary was increased, was an unequivocal testimony to his entire impartiality. I once asked Governor Plumer, who, from a warm personal and political friend, had become, in both respects, entirely estranged from him for many years, if he believed that politics ever had any influence on Judge Smith's judicial conduct; and he replied, in the most emphatic manner, "Never, never." Another man of the same political party with Governor Plumer, told me, that being upon a jury in high party times, he watched the chief justice closely with reference to this matter, "and I am confident," he said, "that party politics had no influence upon him; not the slightest."

I never have seen the person who in his intellectual habits appeared to me so entirely the personification of justice. As a man, he had very decidedly his preferences and his dislikes, and in the choice of his associates was guided by them; but as a judge, all

[1] It is said that a sailor once having heard a case tried, was asked what he thought of the pleas. He spoke well of the lawyers, but said he thought the white-headed man that sat up high at the end of the court-house, argued the best.

these feelings were laid aside. No one had anything to hope from his friendship, or to fear from his enmity. The men were forgotten, the law and the testimony alone regarded. The influence on a neighbor, a brother, or even upon a child, could in no way affect his decision. In reading some of the reports, which he has drawn up in reference to persons of quick sensibilities, and who certainly had claims upon his kindness, I have sometimes felt as if he were needlessly cruel, while in fact he had only set entirely aside those feelings which, under such circumstances, cannot be indulged without perverting the ends of justice. This severe regard to justice, with the keen intellectual powers which cut away everything irrelevant, and present the naked facts according to the evidence in the case, under the light of the great legal principles that should bear upon them, is, if I mistake not, the highest attribute of a judge, and it has been possessed by few men in a higher degree than by him. His manly intellectual vigor, his talent for business, his rare sagacity in judging of men and things, his great learning, his straightforward independence, and, above all, the spotless purity of his character, have placed him among the ablest of New England judges.

"But I shall now," to use the words of Bishop Burnet, in his life of Sir Matthew Hale, "conclude all that I have to say of him, with, what one[1] of the greatest men of the profession of the law, sent me as an abstract of the character he had made of him,

[1] Jeremiah Mason.

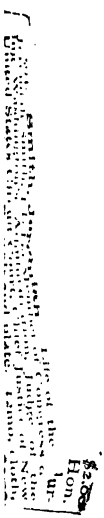
upon long observation and much converse with him." "Judge Smith's natural powers of mind were of a high order. With an ardent and excitable temperament, he acquired knowledge easily and rapidly. After he commenced the practice of law, he always indulged himself freely in miscellaneous reading and studies; and his attainments in literature and general knowledge were highly respectable. But the chief labor of his life was devoted to the study of the law. This he studied systematically as a science. As a counsellor and advocate, he soon rose to the first grade of eminence at the bar. Although successful at the bar, he was preëminently qualified for the office and duties of a judge. With an ample stock of learning, in all the various departments and branches of the law, well digested and methodized, so as to be always at ready command, he united quickness of perception, sagacity, and soundness of judgment. Disciplined by a long course of laborious study, he was able to bear with patience the most tedious and protracted investigations and discussions, to which a judge is so constantly subjected. The most distinguishing traits of his character were impartiality and inflexible firmness, in the performance of all his judicial duties. As chief justice of the supreme court of New Hampshire, he found a sufficiently ample field for the exercise of all his talents. Before the Revolution, little had been done in the colony of New Hampshire to systematize the practice of law; and, for many years after the Revolution, lawyers were seldom selected to fill the bench of even the highest courts. The consequence was,

that the practice and proceedings of the courts were crude and inartificial; and the final determination of causes depended more on the discretion and arbitrary opinions of the judges and jurors, than on any established rules and principles of law. This, of course, rendered judicial decisions vague and uncertain, the most intolerable evil of a bad administration of justice, and but slightly alleviated by the highest purity of intention in the judges. To remedy this evil, Judge Smith labored with diligence and perseverance, by establishing and enforcing a more orderly practice, and by strenuous endeavors to conform all judicial decisions to known rules and principles of law. His erudition and high standing with the profession, as well as with the public at large, enabled him to effect much in this respect; and to his labors the state is greatly if not chiefly indebted, for the present more orderly proceedings, and better administration of justice." [1]

[1] There has been something quite remarkable in the longevity of those associated with Judge Smith, at the time he took his seat upon the New Hampshire bench. Paine Wingate was born in May, 1739, and graduated at Harvard College in 1759. He studied theology, and was a settled minister in Hampton Falls, from 1763 till 1771. He then established himself as a farmer in Stratham. In 1787 he was chosen a representative, and in 1789 a senator in congress. From 1793 to 1795 he was again a representative. In 1798 he was appointed a judge in the superior court, and there continued till May, 1809, when he was seventy years old. He continued to reside in Stratham, till the congregation, over which he had been settled, had become a part of the great congregation of the dead, and he had outlived all who were members of the college while he was there, all who were members of the house of representatives and of the senate, in which he had first taken his seat, and all, excepting one, who were members of the court at the time of his appointment to the bench. He died the 7th of March, 1838, having attained to the great age of ninety-nine years. His widow, with whom he had

lived nearly three quarters of a century, was the sister of Timothy Pickering, and died when more than a hundred years old.

Timothy Farrar was born in July, 1747, and graduated at Harvard College in 1767. At the commencement of the war, in 1775, he received by the same mail commissions as a major in the army, and as a judge in the court of common pleas. He became a judge, and in one or the other of the New Hampshire courts continued to hold the office more than forty years. He was a modest, well-informed, conscientious, devout man; and now, having almost completed his ninety-eighth year, is enjoying the cheerful serenity which comes only from a well-spent life and a firm religious faith.



CHAPTER VII.

JUDGE SMITH'S POLITICAL FEELINGS — JOSEPH S. BUCKMINSTER — FISHER AMES — LETTERS TO MRS. SMITH — DEATH OF HIS YOUNGEST SON.

Mr. Smith was appointed chief justice in May, 1802, and resigned the office in June, 1809. I have thought it best to give the account of his judicial life and character unbroken by other events. At first his interest in political affairs was very strong, and he was not without some of the fears, in which many of the best men at that time indulged, in respect to the great experiment of self-government, which had not then been fairly tried. The following extracts from two letters to William Plumer, dated 21st November, and 25th December, 1803, will show his feelings, although, from the half ironical style in which they are written, their meaning may not be perfectly clear to a stranger. He inquires earnestly and minutely about the negotiation for Louisiana and the Floridas, which was then going on, and adds: "I do not know how it is with my brother sovereigns, the people, but really, considering that our servants abhor

'sacracy,' and are passionately fond of 'pobleesity,' (as S. would say,) it is astonishing how little is known of all these things. It has always been said that kings are ignorant. This is no doubt the case in monarchies. But is it applicable to republican kings? If the sovereign people are ignorant, considering that they are by no means destitute of passions, I fear they will make but sorry kings."

"I am glad to find that federalism is at a low ebb with you. It is dead, and I sincerely wish it buried out of my sight. Don't flatter yourselves that it is ever to have a resurrection. Federalism can suit only a virtuous state of society. These times demand other principles and other systems. Abjure, then, that uprightness which cannot accommodate itself to events — which cannot flatter the people: — that stiff, ungracious patriotism, which professes to save the people from their worst enemies, themselves. Form a union with some of the better sort of the democrats, and with some of the worst; we want the former to increase our numbers, and the latter to do our lying. Federalism has been ruined for want of active partisans of this description. Be sure to engage Duane, Cheetham, and some of the most expert in this science, in the ancient dominion. Appropos to lying, secure Baldwin, he will be useful in the southern section. He is a prudent man, and knows the worth of everything. There is nothing he will not sell, and therefore he may be bought. We must have a new set of leaders. Pickering, Dexter, Ames, Tracy, Ellsworth, Griswold, Wolcott, Jay, Hamilton, King, Ross, Bayard, Marshall, Harper, W. Smith, &c.

must be abandoned. They have had their day. They cannot be sufficiently accommodating. Let us have a goodly number of foreigners, they will always be favorites of the people. Let us have men who can relax their principles of morality as occasion may require, and adapt themselves to circumstances with as much facility as joiners open and shut their rules. Our old rulers in our new body would be like trees transplanted from a forest into a garden, whose branches it is difficult to bend to the fancy of the gardener. We must have more pliant men. But why should I doubt your skill to arrange this business? It is sufficient that I have given a hint.

"Is it possible that we can long stick together as a nation, when there is so little cement, and so much centrifugal force in this heterogeneous mass? To keep a nation together, there must be national institutions as well as a national government; national courts, national militia, army, navy, a national debt, national taxes, national patriots. Now we have none of these things, except a national debt, and a little bit of a navy.

"Themistocles, when desired at a feast to touch a lute, said he could not fiddle, but he knew how to make a small town a great city. Mr. Jefferson can fiddle, and make models of dry docks, and all that, but he cannot make a number of small states a great nation. He can add to our territory, and to our numbers, but these additions tend only to diminish our strength. It never troubles a wolf, how large the sheepfold, or how many the sheep be.

"Now don't say that these things will ever take a

more favorable turn, that the good sense of the people will ever lead them to cherish national feelings and national institutions. It is idle to expect it, it is unnatural. The very end and design of national institutions, is to counteract the local and selfish spirit of the people. Man is a gregarious animal, it is true; but nature leads to small herds. Experience evinces that there is nothing so contrary to common sense, so repugnant to the principles of justice, freedom and humanity, but will pass at certain junctures, when the infatuation of party rage has turned the giddy brains of the unthinking multitude. This party spirit, like the poor, we have always with us. It will be, as it always has been, in the power of bold ambitious demagogues to ride the people, by persuading them that they are in danger of being ridden. Nothing is more easy than to inflame the passions of the multitude; it is easy to acquire their confidence, and easy to lose it. While in favor, there is nothing which the popular leader may not say or do; and when not in favor, the wisest man in the state is the man who has the least influence."

This interest in political matters gradually diminished, as Judge Smith became more absorbed in his judicial duties, and in his letters for several years, I find hardly a passing reference to the political events of the day. Among other things, he amused himself by writing a few articles for the Anthology. He was first applied to in August, 1805, by the Rev. Joseph S. Buckminster, who in his letter, says, "Your manuscript volumes are well known by some of your friends here, to contain many titbits of literature,

which would be highly relished, if they could be permitted to garnish the pages of the Anthology." To this Judge Smith replied, 13th December, 1805. "I have pretty many trifles of the kind you allude to, but as the Anthology grows better, (it evidently does,) and my manuscript trifles grow worse, you will readily perceive there is little prospect of their ever meeting. But still I am desirous of adding something to the pages of the Anthology. This new zeal is produced by reading the Massachusetts Term Reports, by G. Williams. I have a fancy to try my hand at a review of this work. It is somewhat in my way. If no other person attempts it, and it meets your editor's plan, I will for next month, or the month after, send something which may be committed to the press or the flames, according to the verdict of the critics thereon. Let me hear from you. If I do not, this new zeal will soon flag. If you approve, I shall stand engaged to make the attempt.

"I have finished your Fawcett, and like him. He, however, reminds me of Horace Walpole's criticism upon Johnson. 'He illustrates till he fatigues, and continues to prove after he has convinced: he charges with several sets of phrases of the same calibre.' But still he is a man of genius, a philanthropist, and a poet, and I should be gratified by the perusal of the second volume. I shall return it the first opportunity with Walker, who is well enough, and no better — nothing striking. He does not interest, amuse, or much inform me. I do not rise from him much dissatisfied with myself, or much pleased with him; ergo, he is not a good preacher. You see we Exeter peo-

ple are always ready to favor preachers with our opinions. It is no small proof of our benevolence, for we have hitherto derived no advantage from it; and you may add, 'nor we.' "

Mr. Buckminster's answer is dated December 18. "My dear sir: I was highly gratified by learning that you had not forgotten me, nor the Anthology, nor literature, in the intervals of relaxation from the *Musæ severiores;* for it seems, as long as you had that vile judge's coif about your ears, it was impossible to make you hear even the sweet sounds of flattery. I am exceedingly happy that you propose to review Williams's Reports, and still more so, that you have already read them; let not your ardor cool, I pray you, and believe me, the editors are fully sensible of the honor of the proposal. I am requested also to urge you to send a review of Tucker's Blackstone. If you do not own the book, it shall be sent on to you. Remember you have said, that whatever your hands find to do, you do with all your might, which we shall interpret, 'with all despatch.'

"You are right in your conjecture respecting Fawcett; he is no mean poet. But it is remarkable that this man, who drew fuller audiences than any rational preacher, before or since; whom Mrs. Siddons regularly attended, to learn elegance of gesture and elocution, and who was decidedly at the head of pulpit talents among the dissenters of Great Britain, abdicated his power at its very height, and is now retired as a private gentleman, in the neighborhood of London, where, with a handsome fortune, I doubt not, he feeds upon more substantial food than popularity.

With your leave, I think that Walpole's remark, when applied to Johnson's style, is utterly false, because it is so very true of Fawcett's; and every one must see that these two styles are utterly dissimilar. Walpole was a kind of quidnunc in literature, and, as I suspect, incompetent to relish the heavy but admirable proportions of Johnson's style.

"I am sorry to close so soon, but I am called out. I can only say, do not suffer your zeal to subside. '*Ne exudas magnis.*' Mr. Ames [1] has not engaged to accept; it is a great deal to be able to say he has not yet refused. Yours, with respect. J. S. B."

The review was forwarded in February, 1806, with the accompanying note. "Dear sir: I have just finished my critique on Williams's Reports, and send it because I can bear it no longer in my sight. I am heartily sick of it, of Williams, judges, law, and everything but the Anthology and its friends. If I did not think it would do some good, I would not send it at all. I have aimed at utility, and therefore have not spared labor; I hate a flimsy, general criticism. I have tried to make it such as will be read; and yet, if you knew how many severe things I have omitted, how many hard things I have softened, and flattering things I have inserted against my own opinion, as your attorney-generals draw the indictments, your opinion of my good humor and politeness would probably be somewhat increased. It being a new thing, I have indulged myself in taking broad ground. I could easily have written a book; my mind has

[1] Fisher Ames had just been chosen president of Harvard College.

teemed with conceptions, such as they are. I am like a bottle filled with new fermentable liquor. I have been ready to burst. Probably you will think this 'have been' requires to be put into the present tense. I entrust it to your critical tribunal, as Puff did his tragedy to the players, with permission, which they used freely, of cutting out *ad libitum*. I have not noted my authorities for many of the sentiments and even the language in the margin, because I did not think it proper. The learned reader will easily know that many of the sentiments are not my own; they will stand the test."

The review[1] here spoken of, is written with great spirit, and attracted no small attention in its day. The criticisms, though severe, were of the kind to be useful, both to the judges and the reporter. The importance of law reports is thus regarded: "A correct history of what passes in courts of justice is of incalculable advantage. With a single exception, it is the best of all books. It perpetuates the labors and sound maxims of wise and learned judges. It serves to make the path of duty plain before the people, by making the law a known rule of conduct; and, for the same reason, it diminishes litigation. It has a tendency to limit the discretion of judges, and consequently increases liberty. Maxims of law are like landmarks.

"Limes agro positus litem ut discerneret arvis."

In respect to the style of reports, it is said, "Prolixity fatigues, while extreme brevity leads to ob-

[1] Review of first volume of Williams's Massachusetts Reports, contained in the Monthly Anthology for March, 1806.

security. But there is a conciseness which is no enemy to perspicuity, and a prolixity which confounds instead of enlightening. Perhaps it is not in the power of a reporter to say just enough for some readers, without saying too much for others. But we are decidedly of opinion that modern reports are, in general, too prolix. Expunge from them everything not material to the statement of facts, everything from the arguments which does not bear on the question, and everything given for the reasons of the decision which is wholly foreign or irrelevant, and many a huge folio would dwindle into a duodecimo. The eight or ten volumes of Vesey, Jr., would be reduced to two or three; Dallas would be reduced one half; Wallace to a few pages; Cranch would make No. 1 of Vol. I.; and Root would entirely disappear."

The writer, however, does not attribute all the blame to the reporter. "We are also of opinion," he adds, "that the arguments of some of the judges might have been condensed with advantage to the public, and without doing any injury to the arguments themselves. We are not agreeably impressed with 'wordy eloquence' from the bench, still less with attempts at eloquence without success. As the style of laws should be concise, plain and simple, so decisions of courts, which declare the law, should be neither tumid, diffuse, nor rhetorical. The language of judges should correspond with the dignity of the office, and with the majesty of the subject. Great ornament is as ill becoming in the style of a 'reverend judge,' as a black gown turned up with pink is unbecoming his person. The sages of the law

should not for a moment be suspected of sacrificing precision to the harmony of periods. Lord Mansfield was a scholar and an orator; but his eloquence at the bar, in the senate, and on the bench, were as unlike each other, as the eloquence of which we complain is unlike either. When our judges shall have taken as much pains in forming opinions in the cases before them, as Lord Mansfield always did, and shall have spent as many years in the acquisition of polite and elegant literature as he did, we will not object to their being as eloquent on the bench as his lordship. It will no doubt subject us to the suspicion of dulness; yet we shall not scruple to declare, that, in a judge, we prefer labor to genius, and painstaking to ingenuity."

He then illustrates his remarks by comments on particular cases, and adds: "Other decisions might be mentioned as exceptionable; but we forbear entering further into the subject. If the learned judges should be disposed to think that we have already gone too far, we trust that we shall have their forgiveness, when they consider that we have differed less in opinion with the court than they have differed from each other. We can assure them, that the observations we have made have not proceeded from a desire, on our part, to depreciate their learning or talents, for which we have the most cordial respect; nor with a view to lessen the value of Mr. W.'s labors; for we believe they will prove advantageous to the public, and honorable, we sincerely wish we could add profitable, to him; but principally that we may have an opportunity of expressing our sincere

conviction, that our system of jurisprudence is radically defective, and that we shall never have any thoroughly-examined and well-digested determinations — decisions which will stand the test of time, and serve as permanent and fixed rules, so long as the judges, the depositaries of our law, are wandering through the state, without any fixed or permanent place of abode.

"The old proverb, that a rolling stone gathers no moss, is not more true than that a court, constantly in motion, settles and establishes no principles of law. When the principal business of a court is to travel, and to retail the law in every county town, is it reasonable to expect deep research, nice discrimination, or copious discussion on legal questions? Let our readers figure to themselves our supreme judicial court in session at Lenox, for example. Questions of law and trials of fact are blended together on the docket. Amid the tumult and bustle necessarily incident to trials by jury, counsel occupied and teased with clients, witnesses, &c., it is easy to see how questions of law will be argued, even by eminent counsel. The judges, long absent from their families, can hardly be supposed to be perfectly at ease in their minds. Denied all access to books, and fatigued with the labors of the day, and liable, from their situation, to constant interruptions, they cannot so much as have an opportunity of communicating their sentiments, or of hearing one another's reasons. On Saturday morning they must pronounce judgment. Under such circumstances, is it not cruel to exact an opinion, and ridiculous to expect a mature and well-digested one? The first

thoughts which occur to a sensible, and, if you please, to a learned lawyer, on legal questions, may be reasonable, we grant; but they may not be so reasonable, so just, as after-thoughts. The conjectural positions of natural reason, if not fortified by precedents, if not confirmed by elementary writers, or if they are not the result of much previous study and patient investigation, are always to be distrusted. A judge should think reasonably, but he should think and reason as one long accustomed to the judicial decisions of his predecessors. He should be well versed in history, and especially in the history of the constitution, laws, manners, and customs of his own country. The study of New England antiquities, if we may be allowed the expression, is a necessary qualification of a New England judge.

"We believe it is in the power of the legislature to lay the foundation of a system of jurisprudence which in a few years may even equal that of Great Britain. To accomplish this, it is indispensable that the trial of facts and law should be separated. The former should be in each county, and the latter in one, or, at most, in two or three stated places. There is, in the nature of things, no more reason why questions of law should be determined in each county, than that the statutes should be framed and enacted in each county. County lines have nothing to do with either; and it is just as proper that the legislature should be ambulatory, as that a court, not of trials, but of law, should be so."

Most of the suggestions thrown out in this article, with respect to the judiciary of Massachusetts, and the mode of reporting cases, have been since adopted, to

the great and manifest improvement of both. What influence the article itself may have had, it is not possible to determine. The following letter from Mr. Buckminster, shows how it was received at the time.

April, 13, 1806. "Dear sir: It is not less in consequence of my own inclination, than in pursuance of the request of the Anthology Club, that I have now set down to return you thanks for the communication with which you favored us, and which has appeared, (I hope to your satisfaction,) in the last number of the Review. It excites great speculation here, especially among the bar, and there is not a dissentient voice on the subject of its great excellence and importance. The lawyers were, at first, sadly puzzled. Some attributed it to Mr. Parsons, others to Charles Jackson; but at length some of the wisest of them were satisfied, from internal evidence, that it was Judge Smith. S. thinks this cannot be true, for 'Smith and he are very good friends, and he would not have spoken of him in such terms.' The expression, 'wordy eloquence,' he takes to himself. You have put your hand to the plough, and must not look back. Pray favor us with something else — Wilson's works, if possible. You know not under how great obligations you have laid us."

Twenty years after this correspondence, Judge Smith, wrote the following sentence: "Mr. Buckminster, (all the world knows, I mean the younger,) in his words, looks, manners, but especially in the pulpit, had a spirit beatified before its time." How beautifully does this describe the impression made by Mr.

Buckminster, even from his earliest years. I do not know that I ever witnessed anything more affecting than the testimony given to his influence many years after his death, at a public gathering of the graduates of the academy at which he received his early education. The afternoon had been spent in delightful recollections. Former days were revived, and the harsh features of life effaced, when one, known through the nation more than any other man now living for the power of his intellect, rose, and after referring in language of touching pathos to other benefactors of his youth, spoke with overpowering tenderness of him, his early friend, "whom he could not think of without strong emotion, nor mention without tears."

It was while Judge Smith was on the bench, July 4, 1808, that he lost his friend Fisher Ames, for whom he cherished always the warmest admiration. It is much to be regretted that no further memorial of his delightful domestic qualities has been preserved; for the account prefixed to his works is rather a brilliant essay upon his genius, than a sketch of his life. In 1809, Mr. Cabot collected many of his letters, with a view of preparing a volume from his familiar correspondence; but the undertaking was not carried out, and instead of a monument, has proved to be a grave. Mr. Ames, I have been told, first greatly distinguished himself in the Massachusetts convention that was holden to decide upon the constitution of the United States. Samuel Adams had many doubts about the biennial election of representatives in congress, and asked earnestly why that provision had been made? Mr. Ames rose in reply, and looking far down into

the future, with all the fervid eloquence for which he was afterwards distinguished, pictured out the effect of the multiplied elections that were proposed. This he did with such power that, when he sat down, Mr. Adams replied that he was entirely satisfied, and would make no further objection. But brilliant as was Mr. Ames's public career, he was no less remarkable for his social and domestic virtues, for the purity of his life, the warmth of his affections, and that genial overflow of spirits which is so delightful in the daily intercourse of friends, and which, often carrying him beyond his strength, left him languid and depressed. It was Mr. Smith's business, as we have seen, in the winter and spring of 1796, to preserve his friend from the too great excitements of social intercourse. But it was a task beyond his ability; for Mr. Ames's remarkable conversational gifts were too attractive to be resisted, and his unwillingness to turn his friends away was such that, against Mr. Smith's remonstrances, he would often get up from his bed, engage in conversation with as much earnestness, spirit and apparent vigor, as if he had been in perfect health, and then, when the company had withdrawn, would retire to his bed utterly exhausted.

"While both were members of congress" — I use the language kindly furnished by Mr. Webster — "there was quite an unusual friendship and intimacy between them. Mr. Smith entertained the most sincere affection for the social qualities of Mr. Ames, with the greatest admiration for his eloquence, imagination and high tone of national feeling. On the other hand, Mr. Ames found in Mr. Smith a lawyer, on whose

learning he could safely lean, a sound politician of the Washington school, and a companion always gay, cheerful and entertaining. The more sanguine temperament of Mr. Ames brought with it occasionally hours of depression, as well as brighter hours of hope and confidence. Mr. Smith, on the contrary, was more equable, and often chased away clouds which the state of affairs seemed to be gathering over the brow of his friend. No two men, indeed, during the whole period of Mr. Smith's service in congress, were more united in their sentiments and their purposes, or exercised a more genial and kindly influence on each other; an influence the stronger, be it remembered, because they had a common bond of sympathy, in the deep reverence they both entertained for their great political chieftain, President Washington. Their intimacy was long remembered by those who witnessed it. It is not a great many years since a gentleman, going to congress from New Hampshire, was asked by one of the old officers of the house of representatives, who had removed with the government from Philadelphia to Washington, whether he knew Mr. Smith, adding: 'I remember him well in the time of President Washington, always coming to the house arm-in-arm with Fisher Ames.'"

The following extracts, in addition to those already given, are from the few letters that have been preserved out of the many that Mr. Ames wrote to Mr. Smith, but they will serve to show the sort of intimacy that existed between them, as well as his peculiar mode of feeling and writing.

"Boston, March 13, 1798. My dear friend: Do

not wrong me so much as to suppose that my long delay in answering your letter, (so full of wit and friendship,) arose from any decline of my regard. I had resolved to write before I had yours. I have been busy, sick, and stupid for four weeks. I have been stupefying in the supreme court in this place, abusing the health I have acquired, and marring the prospect of its future improvement. No experience has been so decisive of my incompetence to anything that excites, or requires much engagement of mind, as that which I have lately had. Yet I am not dead, and hope to inhale health with the air and repose that next week offers at Dedham. Fate is heedless of my prayers, which are, to be in a situation to rear pigs and calves, and feed chickens at Dedham, the world forgetting, by the world forgot. Saving always, I would not forget my friends, nor have them forget me ; saving also the right, at all times, to rise into a rage against the politics of congress, and a few more savings, all equally moderate and reasonable. In serious sadness, I wish to rest from all labor of the mind that wears out the body, and I would do it if I could eat Indian pudding without drudging in court. You, I hope, enjoy good fees, *cum dignitate* — happy you certainly are, and you know it. I have heard that Mrs. Smith had a long illness when she was confined. I have not been able to learn how she is of late, and I will thank you to offer to her my best wishes and regards. I salute my daughter-in-law,[1] whose merits and ac-

[1] At this time six months old.

complishments are so rare and excellent. My eldest son is at Springfield, and has there cast his eyes on a young lady of that town, but my second son is at present unengaged, and is offered to you as the party to the treaty."

"Boston, November 22, 1798. My dear friend: Seeing Mr. Conner in an office, I steal a moment from the din of the supreme court, sitting here, to tell you I am alive — pretty well — very glad to hear from you and your better half, as I do by Mr. Conner. Write to me, and kiss my daughter-in-law, the princess. Her future spouse is a fine fat boy, as ragged and saucy as any democrat in Portsmouth. You have none in Exeter. They abound in Dedham, though the liberty pole is down. Nelson has beaten the French fleet. Do not grieve for that. What are we to do? The devil of sedition is immortal, and we, the saints, have an endless struggle to maintain with him. Your state is free enough from his imps and influence, to give joy and courage to two Langdons. I really wish to see you and Mrs. Smith. God bless you. Yours."

"Dedham, February 16, 1801. My good friend: It is bold in you, sinner as you are, to ask anything of me. You did not answer my letter about writing to Ben Bourne, nor a former letter, nor those letters I did not write, but which you knew I had regard enough for you to write. I have your judge-letter; and with all these demerits unatoned, I wrote for you to Dexter, requesting him to show it to Marshall, and to do all that he can possibly do for you. I heap coals of fire on your unworthy head. But I will

not allow my rage to proceed any further; on the contrary, I thank you for early asking my influence, which, as one of the Essex junto, you know is great, in favor of your appointment. I did not write to Mr. Adams, which piece of neglect he will excuse, and I hope you will. I have read, and I admire, his book. And if you will write a great book on tenures, as you promised, I will buy it, and, if possible, read it. I am your friend, and will exert myself, you see, to serve you. Seriously, I wish you a judge, though you have not gravity. I wish to see you, to give you pudding in my house, and to tell you with the warmth of feeling of 1796, that I am, court sitting, very busy, your friend, &c."

The letter from which the following is taken, was written soon after the United States' circuit court was abolished.

"The second French, and first American revolution, is now commencing, or rather has advanced two sessions of the national assembly almost, for the message will decide and do the work of the pending session. To demolish banks and funds, not directly, but under plausible pretexts, all false and cheating, all founded on experienced state policy, will be the first act, though the death-blow may not be given to either of them till the fifth, which will be three or five years later. To amend the constitution, and give to Virginia the power to reign over us, is the next step. To do this, new activity will be used to raise and strengthen the factions in each state, and to drill and equip them as subs to Virginia. The newspapers will lie and declaim as usual,

and more than usual. Unprinted lies will be spread abroad, carefully steering off from post-roads and offices, as pedlars carry their packs far out of the way of large shops. Emissaries, such as David Brown was, will be pedestrian and equestrian carriers of the popular mail. This is doing in all the obscure parts of New England, and the spirit of New England will be as much perverted soon, as it is flattered now. Even Connecticut, so ardent in federalism, will decline from her high station, and learn politics of Abraham Bishop. I am serious — a party inactive is half-conquered. The feds maintain twenty opinions, the best of which is quite enough to ruin any party. 'Let the people run themselves out of breath — all will come right. There is no occasion for us to do anything.' Others say, 'we despair, nothing can be done with effect.' Not unfrequently the same persons maintain both opinions.

"Let us be precise in deciding our object: first, negatively; it is not the regaining of the supreme power. The end is, security against the approaching danger — or the best security, if not perfect, that is attainable. What are the means? Not indispensably that we should again have a majority; it is enough to have a strong minority. That minority need not be very numerous, but it should be powerful in talents, union, energy and zeal. It should see far, and act soon. At this moment we actually hold sway in three of the New England states. Vermont has a good governor, and many good feds — almost one half the legislature. Rhode Island should be wrong, and lend the dirty mantle

of its infamy to the nakedness of *sans culotism.* New Jersey and New York are not hopeless. Delaware and Maryland are not yet as much emptied of federalism as Pennsylvania is. Say little of the more southern states, though federalism sprouts in all of them — it is, I own, however; with such a sickly yellow vegetation, as the potatoes show in winter in a too warm cellar. Now sum up the forces, and surely we are not to despair. We have a strong minority in numbers ; of talents, enough ; of zeal, little, but more may be excited ; and the approaching danger, if duly represented, would excite it all. Self-defence exacts from us a union closer than ever, and supplies to our party the energy that party alone possesses — an energy that is inconsistent with languor or inaction in the chief men who inspire and guide it.

" As the newspapers greatly influence public opinion, and that controls everything else, it is not only important, but absolutely essential, that these should be used with more effect than ever. Let all federal papers be kept up, as high as at present. But let a combination of the able men throughout New England be made, to supply some one gazette with such materials of wit, learning, and good sense, as will make that superior to anything ever known in our country, or in any other, except the English Anti-Jacobin, in 1797 and 1798. To pretend to supply with such materials twenty federal papers, is absurd and impracticable. But instead of educated printers, shop-boys and raw schoolmasters being, as at present, the chief instructers in politics, let the interests of

the country be explained and asserted by able men, who have had concern in the transaction of affairs, who understand those interests, and who will, and ever will when they try, produce a deep national impression. The pen will govern, till the resort is to the sword, and even then ink is of some importance, and every nation at war thinks it needful to shed a great deal of it. As matters are actually arranged, the Palladium must be that paper ; it must have, it must have by requisition, the contributions of the mind from those who are rich in that sort of treasure. One or two of that gazette ought to be crowded into every small town, and more into larger towns throughout New England. It must be so supplied as to need no helps in money, but to force its own progressively increasing circulation. It should clearly and aptly state the merits of every question, tell every inquirer exactly what he wants to know about the public business, and in the manner that will impress him — in the manner that will confound and disarm jacobin liars. The principles, the circumstances, the effects of measures should be unfolded, summarily for the most part, but often by profound investigation and close argument. Business paragraphs should be short, clear, and frequent. Occasional essays should appear, to examine speculative democratic notions, which yet prevail, and almost all of which are either false or pernicious, but often mischievous conclusions from admitted premises. Wit and satire should flash like the electrical fire, but the Palladium should be fastidiously polite and well bred. It should whip jacobins as a gen-

tleman would a chimney-sweeper, at arms length, and keeping aloof from his soot. By avoiding coarse vulgar phrases, it would conciliate esteem, and appear with an unusual dignity for a newspaper being.

"Foreign news should be skilfully exhibited, not in the jumbled map that is usual. Literature demands the review of books, and especially of all newspapers, so far as their general scope or any remarkable performances require it. Agriculture should have a share, once a week at least, of the paper. Morals, manners, schools, and such disquisitions as general knowledge would supply, should be furnished with regularity. And for all these labors, various classes of able men should be engaged to supply these various departments. But for the superintendence and principal conduct of the paper, only a few should be selected, and the others should hold themselves as a body of reserve, to step in fresh when the front-rank grows weary. Only six able men in the different branches of the undertaking — I mean six in the whole — would secure its success. McFingal Trumbull, I hope, would be one, as he is *Hermes redivivus*. Will you think of these things? Will you make these ideas known in confidence to Governor Gilman and Mr. Peabody? Will you contribute with your pen to such discussions of law or constitution, or such pleasantries as you can easily forward to Warren Dutton, Esq.? Will you spread these opinions among your leading good men, and hasten their deliberate judgment on the only means to save our country? All this being done, and well done in

every state, then let the building up the state governments be considered an important federal object. Let state justice be made stable and effective. Let the first men be persuaded to take places in the state assemblies. All this must be done, or all will be in confusion, and that speedily. Federalism cannot be lost or decline much lower, without losing all. For though new parties would succeed federal and jacobin, yet the extinction of federalism would be followed by the ruin of the wise and good. The only parties that would rise up afterwards, will be the subdivisions of the victors — the robbers quarreling about their plunder — all wicked. Despondency, inaction, democratic sanguine notions, or federal despair, are to be renounced. I write as fast as I can, and am in a hurry to get done. Now you may talk, for I require no more of your attention. Your affectionate friend. F. A."

Few men have been more happy in their domestic relations, than Judge Smith. His children, one daughter and two sons, were all children of unusual interest and promise. His letters to his wife are full of considerate tenderness, and the allusions to their little ones show how fondly the pleasant images of home were cherished by him, when occupied by his official duties. "Hopkinton, 9th May, 1803. I wish I could spend the day with you and your little tribe. Instead of you I have Wingate; instead of Ariana and William, the plaintiff and defendant; instead of Jeremiah, sweet innocent creature, lying witnesses; for I am in the midst of a cause. If I thought the said Ariana, William and Jeremiah would

resemble any of the three hundred people now before me, excepting some eight or ten, it would make me very sad."

"Keene, 22d October, 1803. I am really sorry for my friend Gordon. Husband and wife should always die together. But what puts dying in my head? May it be far away. And may it be away from our little prattlers; may they long prattle, and may some of the bar, who now prattle, prattle no more. The jury, I see, most heartily join me in that prayer."

"Haverhill, 11th October, 1805. My dearest wife: Mr. Adams unexpectedly gives me an opportunity of writing to you. He does not call you to my recollection. I have neither forgot you nor yours, many hours, since I parted from you a fortnight ago yesterday. I have been much of my time alone, and part of the time in a dreary wilderness, and you have accompanied me in ascending and descending the White Hills, which are sublime enough to merit the name of mountains. They put my old acquaintance, (I believe I may say my old friend,) the grand Monadnock, far into the back ground. They are very lofty and very numerous; and though they sink under Carrigain's description, they are really very sublime. You and I should have enjoyed the prospect exceedingly. I can't help thinking that people bred on mountains or used to them, have more genius and more understanding than the inhabitants of the low country, such as *****, &c. Last evening, I heard from you, in a letter from Colonel Rogers. He only says you were better than when I left you, and

the rest of the family well. I wish he could have said the latter of you; however, it is something to be better. If you will promise to continue growing better, I shall almost find it in my heart to forgive you for not being well. Seriously, my dearest love, there is nothing I so much desire in this world as your health and happiness; and this I am sure you can say in return of your husband. Heaven grant our mutual prayers may be heard, and as to everything else, I will be resigned, and almost indifferent. I am sorry you could not write when Colonel Rogers did. I am sure you could not, or you would have written. It was something to receive my old surtout immediately from home; I was going to say immediately from your hand. It would add much to its value, if this were the case. Mr. Adams sets out immediately for home, and yet I do not wish to accompany him. The business he goes on is indeed unpleasant. You have, no doubt, heard all about it. We despise many, almost hate some, and love a few of our fellow mortals, and yet we are very dependent on this same motley crew, and the worst of them can make us very miserable. Is it not a matter of grateful recollection, that, among all the rogues with whom I have been professionally and officially concerned, no one has done us any harm? I am almost ready to say, God bless them. I forgot to tell you that I am very well, and have been vastly well ever since I left Exeter. If this should continue to be the case, don't you apprehend I shall set my face reluctantly towards the east? If you will meet me at Amherst, I think you will have no great difficulty in dragging me to

Ariana, William and Jeremiah. Give my love to them and the girl, and believe me entirely your Jeremiah Smith."

In another letter he said: "Our friend died this morning at five o'clock. As she suffered greatly the last two days, I was glad to hear that she was relieved. The family suffered extremely." A few days later he said: "We had a great funeral — large company, much grief, and the mourners well dressed. Much time had been taken for the purpose. O pride, pride! thou minglest with our sorrows as well as our joys. . . . . I long very much to see you and the two sweet little fellows that are prattling at your side. God bless you, my dearest love."

"Amherst, Tuesday, twelve o'clock, November 4, 1806. I beg, my dearest love, that you would attend particularly to the hour mentioned above, (twelve o'clock,) because the few lines I sent by Mr. Sparhawk, were dated at eleven. You may be sure I had not then read your sweet letter, by that lump of earth, Dr. Tenney. Strange that a letter carried in his pocket-book thirty hours, had not lost all its spirit, and what is infinitely dearer to me, all its love! I have a great mind that he should lose his cause. I perceive that it was his fault that you are not now with me. Can you conceive of my disappointment, when he presented himself at my lodgings, and alone, just as I was going to court this morning? Judge Wingate had informed Mr. Charles H. Atherton, on his arrival, and Mr. A. informed me that Dr. Tenney would be up in the evening, with Mrs. Smith. This was unexpected happiness, and therefore made the greater

impression. I began to love the doctor, because he was to be so near you. I can't describe to you how delighted I was at my prospects. Nine o'clock came, and ten, and eleven, and I retired to my solitary cell, not to sleep — that was impossible for many hours, but to think what time you set out — how you parted with the children — what accidents befell you by the way — where you lodged, and at what hour I should see the chaise arrive this morning. If the doctor is satisfied with the reception I gave him, he is more insensible than you can conceive of. I neither inquired for his health, nor that of his wife, but where you were. He said he could not procure a carriage strong enough. Everything with him goes by weight, and so, I dare say, he thought of you as of one hundred and fifty pounds of lead. Well, surely we are differently made, and I hope and trust of different materials. I shall hate and despise Exeter, the longest day I live, for having weak horses and slender carriages. But I will not be deprived of what has thus got possession of my whole heart. I will send my horse and chaise for you, and you must be with me ; I shall be sick if you do not. P. S. — Dr. Tenney has just called on me, (two o'clock,) and makes bad worse. He says you sent word to him on Saturday, to know how he was coming ; and he sent back word that he would carry any letter or package to me. It seems it never occurred to his feeling heart, that the best thing he could bring me was you, and that you could have any wish to come and comfort me, in my labors here."

"Wednesday, two o'clock, P. M. I have this moment received at the post-office your letter of yesterday, and am as happy as happy can be, at the prospect of seeing you Saturday night. What a charming conclusion to a troublesome week. I had just made my arrangements to send for you to-morrow. I had engaged a horse, and intended this afternoon to propose to William Gordon to be your gallant. But Mr. Mason's politeness makes it unnecessary to send. You will come directly to my lodgings, which are very good. There is no person with me, and everything is as it should be. I called on Mrs. Mason last evening, and she expressed a strong wish that you might come with her husband. That was very good in her, was it not?"

"Charlestown, N. H., May 14, 1808. I never can express, in terms strong enough, how much I am delighted with your letter by Mr. Stevens. If you will promise to write me such letters, I will go from home half the time at least. Let us grow old together, and let our path of love, like the path of the just, shine more and more to the perfect day."

"Haverhill, N. H., October 13, 1808. I cannot yet say when we shall adjourn; but the better opinion is, that Saturday night will end the turmoil of Haverhill court, in which case you will be so good as to prepare for me a smile by Wednesday. I am very well, and in very good spirits, because very busy, and the business does not fatigue me, as was the case at the Exeter court."

The day after these lines were written, Judge Smith's family was visited by a most afflictive event,

which is thus described in a letter of business, dated the 31st of October: "I mentioned my return from the circuit ten days ago. It was the first painful visit to my own home. Our dear little Jeremiah, in his seventh year, was drowned on the 14th instant. At play with a boy of his own age, he accidentally fell from a bridge, and, before any assistance could be had, was past recovery. I was at the distance of one hundred and twenty miles, but arrived in season to attend the funeral. I will not attempt to paint his mother's distress; and his aunt P.'s [1] sufferings are, I believe, nearly as great. He was her favorite from infancy. I hope a similar calamity may never befall you or yours."

To the Rev. Mr. M'Clary, November 2, 1808. "Reverend and dear sir: According to the request expressed in your letter of the 31st ult. I have made such a certificate as you desire on the deed, and sincerely hope it will answer the purpose intended. I am sorry to hear of your indisposition, and hope it will be of short continuance. Your kind sympathy with Mrs. Smith and myself, on the loss of our dear child, as an evidence of your friendly regard, is consoling. I hope we are entirely submissive to the divine will, in this sore breach on our little circle, and only solicitous to improve the afflicting dispensation as we ought."

Judge Smith almost immediately set out again on his judicial duties, but with feelings tender and sub-

[1] Two of Mrs. Smith's sisters were in Judge Smith's family ten years.

dued. He was not a man to talk of his emotions; but those who know how to read what is expressed by silence, as well as by words, will see how much is implied in the following short notes to his wife.

"Amherst, November 11, 1808. Judge Wingate has just taken his seat, and brings me no letter from you. Captain Dana has not arrived, and I am about to set out for Peterborough. Judge Livermore is very good, and agrees to stay till Monday morning; so that I can spend two days at P——. I am sorry to go further from you without hearing. Never was there a time when I had so great anxiety to hear from you. Mrs. Mason I have just seen, and it seems she but just saw you. But I will suppose you well, and your sister better, because with all my heart I desire it."

"P. S. — Captain Dana has arrived, and brought me your letter. I have read it with more interest than I ever read anything from you. I did not expect you would now write, as you would have done three months ago. I perceive our friend M'Clary soothed your feelings. I wish he could visit you every day till my return. You are not well; do, my dearest wife, take care of your precious health. Do not add to my misfortunes; for my sake be well. Your mind will gradually recover its tone, and we shall — our hearts will, be made better. God bless you, my dearest wife. So prays your ever affectionate husband, J. S."

"Amherst, November 14, 1808. Monday evening. My dearest wife: Captain D. is so obliging as to call, and offer to carry a letter. I can't omit

writing, though I expect to be with you Thursday evening or Friday noon. What would I not give to have you with me this night! Mrs. Spalding is all goodness, and you would be charmed with her; but the days are long, and the nights longer. I returned this morning from Peterborough. They are all well; but I did not enjoy myself. I never took so little interest in business or in friends, as at this circuit. Judge Farrar is just gone; he spent the evening with me. It is now past nine. He made the kindest inquiries after you. God bless you, my sweet wife."

It was a sore and lasting grief, which thus robbed business and friendship of their accustomed interest, making the days "long," and the nights "longer." It was the first really severe calamity that Judge Smith had known. His affections and his pride were bound up in the "dear child" that, with his name, was supposed also in his character to bear no small resemblance to himself. The world could never again become to him what it was before; a change had passed over it; his feelings were chastened; and if no great and sudden revolution was wrought, his character was deepened; the day-spring of a brighter hope began, and yielding, as he did, with entire submission to the divine will, his heart was made better, and the way prepared for patience, through other and heavier trials, to have its perfect work.

CHAPTER VIII.

1809 — 1810.

GOVERNOR OF NEW HAMPSHIRE.

In the spring of 1809, Mr. Smith was chosen governor of New Hampshire. His interest in politics, as has been already observed, had been gradually diminishing, and for several years his papers contain scarcely a reference to political events. His judicial office gave him occupation enough, and of the kind he best liked, while it opened to him a field of usefulness and honor that might satisfy his ambition. Why then should he consent to be held up as a candidate for any political office, especially for one less lucrative, and, in the judgment of every wise man, less honorable than the office he already held? "In accepting it," he said, "I have consulted neither my interest nor inclination. The last seven years of my life have been entirely devoted to the office I have just vacated. In that office, congenial with my habits and pursuits, and the duties of which had in some measure become familiar by practice, I began to indulge the hope, if my life should be spared and health

restored, that I might realize in some small degree, the wish always nearest my heart, of being useful to my fellow-citizens. But it has always been my belief, and I am not sensible that my practice has been at variance with it, that, in a government like ours, every citizen is at the disposal of his country; and though no wise man will ever aspire to office, yet no dutiful citizen will feel himself at liberty to decline its labors and its cares, at the call of his country. He will consider his fellow-citizens as the best judges in what way he can best serve them, and it will be his highest ambition to merit their approbation by a diligent and faithful discharge of duty."

The reason here given is strengthened by the fact, that in the whole matter he was entirely passive. I cannot learn that he ever consented to be a candidate except by not formally declining. He went steadily on in the performance of his judicial duties, taking no part in the election, and probably as indifferent to the result as any man in the state.

The reason above given, however, does not fully meet the case. The great object of Mr. Smith's public life had been a better administration of justice. To this he had chiefly devoted himself while in the state legislature. As a judge he had introduced a more orderly practice, and prepared the way for a more strict and exact administration of the laws. But the laws themselves were exceedingly defective, and he considered that it was only by establishing the judiciary on a more liberal foundation, and reforming the whole body of statute laws, that the jurisprudence of the state could be made as perfect as the

lot of humanity would admit. He hoped that Mr. Mason might be persuaded to succeed him on the bench, in which case the duties of the office would be discharged with eminent ability and impartiality; while he, in his new capacity, should give his whole strength to the improvement of the laws, and thus introduce into the executive and legislative, what he had already accomplished with such remarkable success in the judiciary department. Such in substance were his views, as explained in confidence to a friend who called upon him before the election, in order to dissuade him from allowing himself to be a candidate. But in each and every respect he found himself disappointed and deceived.

He was chosen by so small a majority that whatever he might recommend could have no great weight of public opinion to sustain it. He was elected by a political party, in violent party times, when both those who supported and those who opposed him were more intent on the little party expedients of the day, than on any extended system of legislation, which might look to the permanent advancement of justice and the well-being of society. In his speech to the legislature, the 14th of June, 1809, the judiciary was almost the only subject which he particularly recommended. "I cannot," he says, "forbear calling your attention in a particular manner to the administration of justice, and recommending this most important branch of civil polity to your protecting, fostering care. Next to the power of religion, a strict, able and impartial administration of justice is the best security of morals. It is indispensable to the

peace, happiness and good order of society. It is in vain that the legislative body frame and adopt the wisest and the best system of laws, if the interpretation of them be entrusted to incompetent or unskilful hands. No part of our constitution is more just than the declaration that, 'It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and due administration of justice.' But this declaration of rights will be attended with no practical advantage to our citizens, unless the legislature and the supreme executive give it life and energy by the due exercise of their respective functions.

"It is not sufficient that these departments abstain from encroachments on the judiciary. Adequate provision must be made by the legislature for its support. Twenty years' attendance on courts of justice has taught me something of the importance to the community of an able, upright and independent judiciary, and nearly nine years' experience on the bench has given me some knowledge of the perplexities, labor and great responsibility incident to the office of a judge. In the worst constituted judiciary, able and independent judges may happen to be found, but such are not to be expected. Judges will generally bear an exact proportion to the provision made for the office. A long and continual sacrifice of individual interest for the general good, ought neither to be expected nor desired. The nature of man must be changed before institutions built on the presumptive truth of such a principle can succeed. It would

be a reproach to our state, of which it is altogether undeserving, to suppose that it wants either the ability to make a suitable establishment for this all-important department of government, or materials for judges such as the constitution contemplates. When the office is made as respectable as it ought to be, the emoluments adequate to its arduous duties and high responsibility, men will always be found who will cheerfully devote twenty years of their lives in preparation for the office, and the residue in the laborious and faithful discharge of its arduous duties. I would not depreciate the value of a spirit of patriotism which leads to individual sacrifices and sufferings for the public good, but it is unreasonable to expect from any man a life of study and application, the sacrifice of much of that ease and comfort every man finds in the bosom of his family, the total renunciation of all other means of acquiring property, without the expectation of receiving from the public an adequate reward for these sacrifices and services. With the legislature, then, it rests to determine what shall be the character of our judiciary. The constitution requires and enjoins that it should be as perfect as the lot of humanity will admit. Will our citizens be content with one less perfect, because they can have it for a less price? on this subject will they be satisfied to be outdone by our sister states? It is in vain that the executive possess the power of appointment. It is but the power of inviting to a seat on the bench those whose learning, ability and integrity qualify them for the employment. But will such obey the call if the provision for the office is deemed inadequate?

"To me it would be a source of great regret to find this office, or this department of government, subject to the revolutions of political parties, or at all affected by party feelings. All parties are bound to unite in a subject involving in it everything dear to all. If the time should ever arrive when our courts of justice shall be swayed by popular clamor and popular prejudices, when our judges shall know no other rule of judgment but the humor of the times, it will be falsely said that men are tried for their lives and fortunes; they will live by chance, and enjoy what they have as the wind blows, and with the same certainty. As far as depends on me, you may rest assured, that no considerations of that nature, will have the smallest influence on such appointments. . . . . I trust you will excuse my earnestness on this subject. I feel its importance. It lies near my heart. I urge my sentiments with the greater freedom, because I cannot, I shall not, receive the smallest benefit from the best judicial establishment, except in common with my fellow-citizens. I can have no other inducement for what I recommend, than a full conviction of its utility and indispensable necessity to the honor and well-being of the state. I am not conscious of a wish more sincere than that of seeing the place I now leave on the bench, filled by a person every way better qualified for his station than I could pretend to be."

'Strange as it may seem, these remarks so true, so important, and prepared with so high an object, were made, above everything else, the means of bringing odium upon the governor. The expression, "twenty years' attendance in courts of justice," was tortured

from its true meaning, and made in the democratic papers a hissing and a by-word against him. In a series of articles[1] written with much adroitness and ability, and supposed to be by an old friend and correspondent, the changes were rung upon them with a disingenuousness which nothing but the malevolence of party rage could palliate or excuse; while many of the federalists, smitten by that curse of all political parties, the fear of offending the people, and looking, not to his language, but to the popular mind for the interpretation, had neither the wisdom to understand, nor the magnanimity to sustain him. Of course, his recommendation had no influence with the legislature, and the measures nearest his heart fell to the ground, answering no other purpose than to make him unpopular with the people. It was a cause, however, in which he might rejoice to be counted worthy to suffer shame, and in reference to it, he might have employed the language used by Edmund Burke, on a similar occasion.[2]

As another instance of misrepresentation, I would refer to an act of the legislature, appropriating about thirty-five hundred dollars for the erection of a building connected with the medical school at Hanover. Immediately in the opposition papers the cry was raised that, by this measure, the governor was en-

[1] In the New Hampshire Patriot.

[2] "The charges against me are all of one kind; that I have pushed the principles of general justice too far; further than a cautious policy would warrant; further than the opinions of many would go along with me. In every accident which may happen through life, in pain, in sorrow, in depression and distress, I will call to mind this accusation, and be comforted."

couraging resurrectionists, and that if he were continued in office, the dead would not be permitted to sleep quietly in their graves. In 1832, J. S. said in a lecture, " we now witness what I never expected to see below, legislative bodies providing subjects for anatomical dissections."

In his judicial appointments he succeeded as little to his mind. As no adequate provision had been made for it, Mr. Mason could not accept the office of chief justice. The Hon. Arthur Livermore, an associate justice, was promoted to it, which left still a vacant seat upon the bench. But the salary was such that men of very high qualifications would not accept it. George Sullivan, Samuel Bell and Caleb Ellis, refused to be nominated. And to increase the difficulty, three of the five [1] councillors, as they belonged to the democratic party, would permit none but a man of their own party to be selected. In a conversation at the September session of the council, they expressed an opinion in favor of Clifton Claggett, an amiable, honest man, I believe, but wholly unfit for the place, more especially as the other associate justice, who had just been appointed, was a man of no legal education. The governor expressed a decided opinion against him. At the December session, the governor requested that they should name

[1] The councillors were Elijah Hall, Richard Dame, Samuel Bell, democrats; Caleb Ellis, Benjamin J. Gilbert, federalists. My statements here are drawn from minutes taken at the time by the governor, and compared with the official records of the council, in examining which, I was greatly assisted by the obliging attention of Mr. Treadwell, the secretary of state.

some other person, but they did not feel themselves at liberty to agree upon any other. No nomination was made; but at the next meeting of the council in February 1810, after the governor had nominated Mr. Vose, Mr. W. H. Woodward and Mr. Moody, without success, the council named Mr. Plumer, Mr. Bell saying, as Mr. Dame had formerly done, that he thought his abilities good, but doubted as to other qualifications. The governor expressed no opinion of his other qualifications, but did not express a high opinion of his law knowledge. A majority of the council then agreed upon Jonathan Steele, and the governor concurred in the appointment as the best that, under existing circumstances, could be made, "it being," as he said in a letter to Judge Livermore, "deemed (by the council) more important that the court should have right opinions in everything else than of law." It is easy to see how exceedingly vexatious these proceedings must have been, and how completely, in their result, they must have dashed to the ground the anticipations with which he entered upon his office.

In little things, oftentimes more annoying than graver matters, the tide went equally against him. On his return from Concord, at the adjournment of the legislature, a cavalcade went out from Exeter to escort him home. They met him in the midst of a violent rain, and he on horseback and bare-headed, was obliged to ride half a mile or more, till his very boots were filled with water. In the awkwardness and confusion occasioned by his untried situation, on arriving at his house he was said to have forgotten to invite the company to take any refreshments, and this by

some was maliciously attributed to his fear of the expense, while others amused themselves by ludicrous stories of Mrs. Smith's horror at seeing her carpets soiled by so many muddy boots. The opposition newspapers, of course, made the most of this, and the omitted civility was held up as such an instance of aristocratic meanness, as to be not without its influence at the next election.

At the earnest request of President Wheelock, governor Smith attended the commencement at Dartmouth college. He was met at Lebanon, about five miles distant, by a very large number of gentlemen from Hanover and the neighboring towns, and a company of cavalry. When he first appeared in sight of the village, "his approach was announced by the ringing of the bell and the firing of cannon. When he had reached the square, he was again saluted by three heavy discharges of cannon, by an elegant concert of music, and especially by the joyful countenances of a numerous company of spectators." And "this manifestation of love and respect," adds the newspaper from which I have borrowed the account, "was from gentlemen of the first respectability, without any distinction of political party." These attentions were undoubtedly gratifying to his feelings, although, in his sober judgment, he attached to them as little value, as those who profess to despise them most. Whatever satisfaction his visit may have given in other quarters, it seems not to have left a pleasant impression on the mind of President Wheelock.[1]

[1] Several little incidents occurred, which the governor used afterwards

The particular act which probably wounded Mr. Smith most severely at the time, came from his political friends. Seeing, as they thought, the tide of popular favor turning against him, and supposing that John Taylor Gilman would be more likely to be chosen, the men who had the year before taken such pains to get him from the bench for what they considered a more important place, appointed a committee to wait upon him, and advise him, on account of his apparent unpopularity, to decline being again a candidate. The committee, who went on this ungracious errand, were received as might been been expected. He replied, in substance, and with emotion not unmixed with anger, that as he had taken no part in putting himself forward for the office he then held, so he should take no part in withdrawing him-

to tell very amusingly. There happened to be present, (I believe it was on this occasion,) an English lady of some note, whom a distinguished literary gentleman was, as the governor thought, overloading with flattery. When an opportunity occurred, he ventured to suggest to the lady, that she must not consider that man a fair specimen of American breeding; but she replied, with some warmth, that "he was the only well bred man she had found in America." A long time before, Mr. Smith had been on terms of intimate friendship with a young lady, with whom he corresponded in a manner certainly not creditable to his sincerity, unless he intended to marry her. After two or three years the lady very properly broke off the correspondence, and, in a letter which showed how deeply her feelings had been wounded, but with the dignity becoming a woman under such circumstances, sent back his letters, and asked that hers might be restored to her. Years had now passed by, since both the parties were married, when they met once more at President Wheelock's, and it fell to the governor's lot to wait upon her to the dinner-table. As they were going out, she observed in a tone of some resentment, "Ah, Jerry Smith! I know you." "And my dear —— ——," he instantly replied, "I know you, and I love you too." It is difficult to say which most to admire, the gallantry or the impudence of the reply.

self from it. His friends retired as wise as they came; but there was left on his mind a feeling, which he never got over, of inexpressible repugnance to the little, self-elected, irresponsible cliques, who by their secret management would dispose of all offices and control public affairs. His subsequent writings are marked by a degree of severity and bitterness on this subject, which they show in respect to nothing else. It was a standing remark of his through life, that he had received more injury from his friends than from his enemies.

At the election in March, 1810, John Langdon was chosen governor of New Hampshire, and Mr. Smith was once more thrown back into private life. Except in respect to his health, which I cannot but think was one of his chief reasons for leaving the bench, the experiment had proved an utter failure. In not one of the principal measures which he had proposed to himself had he succeeded; but at every step he was vexed, embarrassed and disappointed. He often referred to words used in the prayer at his inauguration, "that he might go in and out before this people," as literally fulfilled. We may well understand how, when some years after he was addressed by a stranger in the words, "Governor Smith, I believe," he could very sincerely reply, "The same that was such for a short time, and but a short time, thank God;—not but that I believe in my conscience the good people of the state were, to say the least, equally glad that the time was short."

But however lightly he might speak of it, and

however cheerfully he might bear it, the experience of that year was to him a severe and heavy disappointment. He was not, I believe, insensible to popular favor; but took, as every good man will, an honest satisfaction in seeing his efforts appreciated and valued. But the sore trial was to find himself thwarted and crippled, in respect to those great measures by which he had hoped to advance the best interests of the state, and by its superior laws and judicial institutions, to build up, in the judgment of the wise and good, beyond the reach of popular favor or reproach, a lofty and enduring reputation.

But why did he not succeed? In the first place, those were violent party times, and he who did not enter with his whole heart into the party contest, could not secure the public sympathy so far as to carry through any great and important public measure. Where, under the discipline of unscrupulous leaders, a party, guided by party feeling, keeps itself in power for a succession of years, there is established a despotism, which curses the very soil on which it treads. Social affections, public and private honor, the rights of individual judgment, when at variance with the rules of a few party leaders, are sacrificed without mercy. They who have the courage to stand by their own opinions, are proscribed and driven out from offices of trust and honor, and many of the best and ablest men are, in fact, disfranchised and disowned. The political history of New Hampshire, for the last five-and-thirty years, might be adduced, to illustrate and confirm these general remarks. If the future historian should

condescend to notice those who have there held the highest offices, he will meet with honorable exceptions; but too often, while seeking to hold up encouraging examples of political distinction, he will be obliged to make out the sad record of moral degradation. But there is a law of retribution, which makes no distinction between public and private conduct, and which, in its own good time, obliges all to reap even as they sow. When the leading federalists, forsaking the great principles of public policy on which they professed to act, began to show their conservatism by deranging permanent institutions, in order to remove temporary evils, the party fell through, as untrue to itself. And so with the other party, when, instead of looking to the good of all, it converts itself into a mighty engine for the exaltation of its leaders, it may for a long time seem to prosper; but sooner or later they who have triumphed most, will be forced to taste the bitter and poisonous fruit of the tree which their own hands have planted, in the vain hope that it would prove fatal only to their opponents.

But in addition to all this there was, in the position which Mr. Smith had previously occupied, and in his character, much that disqualified him for being a popular politician. He who for so many years had filled the highest place on the bench, till his form had become associated in the minds of the people with the venerable majesty of the law, could not, without losing something of their respect and his own, come down to manage the thousand springs which act upon the public mind. It may be ques-

tioned whether any one, who has been long and eminently distinguished as a clergyman or judge, can, as an active politician, continue to enjoy the public confidence. For, in proportion to the purity of mind, the loftiness of purpose, the sanctity of life, which men have been accustomed to attribute to him, will be the revulsion of feeling, when they see him descend from his high place, to mingle, like others, in the vulgar fray. And he whose sole business it has been for years to discover what is just, and to declare it with an authority from which there is no appeal, cannot volunteer to come down into the arena of political strife, and stand there as a candidate for popular favor, without losing in his own mind something of the sense of personal dignity and self-respect. At the same time, the habits of his life, just in proportion as they have lifted him above the passions of the world, in the discharge of his sacred duties, have destroyed in him that quick sympathy with the popular feeling, by which he may adapt himself to circumstances, and prepare his measures and the public mind for each other. Here Governor Smith was extremely deficient. As a statesman, he could see clearly, and prepare with remarkable wisdom, the measures best fitted for the public good; but as a politician, he had not the art of managing men, and so of securing the adoption of his measures. This he has himself expressed, with equal sincerity and truth. "I have been," he says, in the record of his private thoughts, February, 1825, "too regardless of private fame, too heedless of personal advantages; have taken too little, indeed no pains,

to secure to myself, by legitimate and honorable means, a popular sanction of my conduct. I have always had a general wish for public and private approbation ; but have always been too much, too entirely occupied, in the particular actions in hand, to regard their bearing on popular opinion. The first intimation I have generally had that the manner was wrong, (for the actions were generally, and the intentions always good,) has been the advantage taken by persons desirous of disparaging me in the public estimation."

In another place he has said: " It is not new to me to be blamed by two opposing parties. As a party man, it is an insuperable objection to me that I can as easily discern the faults on my own side as on the other. Now your true party man sees no faults but on one side, and there all is in fault."

" A party must do the very thing we condemn, prefer their friends to the public good. They cannot retain power, or be stable, without gratitude to their friends. The chain of friendship must be bright — the difficulty is in retaining those for whom they can do nothing. They must be liberal of promises, and it is well if they for whom nothing is done be simple. The knowing ones must be provided for, and the less pure the conduct, the greater the clamor set up about their own purity, accompanied with vehement accusations against their adversaries. They are sure of belief in both ; a jury will not require much evidence, where they have an interest in the verdict."

To obtain popularity, or serve the people by such means, was altogether beyond Governor Smith's skill.

CHAPTER IX.

1810 — 1820.

MR. SMITH AT THE BAR — JUDICIARY ACT OF 1813 — CHIEF JUSTICE — JUDICIARY ACT OF 1816 — MR. SMITH AGAIN AT THE BAR.

On ceasing to be governor, Mr. Smith returned to the practice of his profession. He did not lose the cheerfulness that was so remarkable a trait in his character, nor had he ever the embittered feelings of an ill-used or disappointed man. A gentleman,[1] who afterwards reached the highest place at the New Hampshire bar, and who was with Mr. Smith as a student in 1810, gives the same account as all others who at any time were in his family, of his obliging attentions to the young, and his uniform elasticity of spirits. Yet I doubt whether he engaged in business or politics with as much interest and zest as before he went upon the bench. This I infer from single expressions in his letters to Mrs. Smith. —

[1] Joseph Bell, Esq., now of the Massachusetts legislature.

"Keene, 24th October, 1810. I wish I loved money, for then it would give me pleasure to earn it; but I do not, and nothing but a sense of duty makes me labor in my profession." "Amherst, 12th October, 1811. I have not stood in need of nursing, but have needed a great deal of soothing, which nobody but you could give. Mrs. S. is very well and very kind, but I wish with all my heart that you were here." "Boston, 24th March, 1812. I have lost my taste for politics, if I ever had any, and here I hear nothing else. God grant that I may be delivered from this body of politicians, and return to my rest." But nowhere in his letters, written with the unrestrained freedom of perfect confidence, is there an expression that would indicate disappointment, or a mind dissatisfied with his position.

His professional income more than equalled his expectations, and his faculties must have been tasked to the utmost; for in the same county with himself were Jeremiah Mason, Daniel Webster, and George Sullivan. These men were then in the full vigor of manhood, and in the contests at the bar must have furnished an extraordinary exhibition of forensic power. Mr. Sullivan, the son of Gen. John Sullivan, and for many years attorney-general of New Hampshire, was a man of fine address, quick parts, and flowing eloquence. It was a pleasure to listen to the rich tones of his voice, as the sentences came rolling out with their full, regular and sonorous cadences. But he was as much inferior to Smith and Mason in legal strength and knowledge, as he was

their superior in the power to move the feelings of a jury. The names of Mr. Smith and Mr. Mason are, by those who remember those times, most frequently mentioned together. They were powerful combatants, less unequal than unlike. Both were profoundly learned, but Smith the more accomplished scholar; both were profound thinkers, but Mason's the more original mind. With perhaps equal industry in the preparation of causes, the one fortified his position with accumulated authorities, the other trusted more to his native strength and the force of reason. The one was copious in illustrations, opening his views as in the broad sunlight, and explaining them till none could fail to understand; the other laid himself out in a few bold strokes, and with a condensed energy of expression that seldom employed a superfluous word. The one was a more lucid expositor; the other a stronger reasoner, and possessing more masterly powers of analysis. In cross-examining witnesses, Mr. Mason, whose skill in this respect was perhaps unequalled in this country, laid his plans far back, getting all that he wished before his design was suspected; while Mr. Smith, with piercing eye, watched his opportunity and darted with sudden surprise on the unhappy man who was laboring to conceal the truth. Yet either could apply the other's method. Severity with the one smote down its victim by a single blow; with the other it was oftener a cutting irony, from its exceeding sharpness hardly felt till the mischief was done. Wit, in the one, had the pungency that only awakes a smile; in the other, it was the ludicrous association or the

joyous humor, that convulses men with laughter. But here too, either could use the other's weapons. In pathos, they were perhaps equally deficient; and equally remarkable for the contemptuous indignation which they could excite against whatever was mean or dishonest. As an advocate, each was ready to take all the advantage of his adversary that professional adroitness and the rules of the bar would allow; but they were both men of personal honor, and of a proud, unbending integrity; and as either spoke of those high virtues, he seemed a fitting champion and representative of his cause. Neither of them laid claim to the charm or graces of oratory. When they met at the bar, it was the stern encounter of massive intellectual strength, in which they dealt their heaviest and sharpest blows. In legal acquirements and logical skill, they were the not unworthy associates and antagonists of Daniel Webster;[1]

[1] The first time that Mr. Mason and Mr. Webster ever met, was in a criminal trial. Col. ——, a man somewhat prominent in the democratic party, had been indicted for counterfeiting. It was a desperate case, since he had been detected, not merely once or twice, but many times, in passing counterfeit money. He was so connected with his party, that it was thought very important, on political grounds, to secure his acquittal. A subscription was accordingly raised to defray the expenses, and Mr. Mason was employed to defend him. It so happened, that just before the trial came on, the attorney-general — not Mr. Sullivan — who was subject to fits of intemperance, was obliged to go home, and Mr. Webster, who lived in the neighborhood, and knew all about the case, was applied to by the solicitor to act in behalf of the state. Mr. Mason had heard of him as a young man of remarkable promise, but he "had heard such things of young men before," and prepared himself, as he would have done, to meet the attorney-general. But he soon found that he had quite a different person to deal with. The young man "came down upon him like a thunder-shower;" and Mr. Mason's client got off, as he thought, more on account of the political feelings of the jury, than from the arguments of the counsel.

while in that combination of gifts which makes the commanding orator, he stood with them, as he has done everywhere else, like Mount Washington among the other mountains of New England. Mr. Smith has often said, that in single qualities he had known men superior to Mr. Webster; that Hamilton had more original genius; Ames, greater quickness of imagination; that Marshall, Parsons, and Dexter were as remarkable for logical strength; but that, in the union of high intellectual qualities, he had known no man whom he thought his equal.

While the New Hampshire bar was at that time distinguished for its ability, the bench did not enjoy in an equal degree the public confidence. The chief justice, a man of strong, uncertain powers, in whom was vested whatever of respect the court was entitled to, was the only one among the judges of the superior court, who had not evidently been appointed from party considerations alone. Richard Evans, who had been placed upon the bench by Gov. Langdon a few days before he was succeeded by Gov. Smith, had a sort of metaphysical talent, but no ac-

Mr. Mason was particularly struck with the high, open, and manly ground taken by Mr. Webster, who, instead of availing himself of any technical advantage, or pushing the prisoner hard, confined himself to the main points of law and fact. Mr. Mason did not know how much allowance ought to be made for his being taken so by surprise; but it seemed to him that he had never since known Mr. Webster to show greater legal ability in an argument.

In drawing any comparison between Mr. Smith and Mr. Mason as advocates, it should be borne in mind that, while the latter was actively engaged at the bar more than forty years, the former, after spending seven years in congress, gave the strength and enthusiasm of his manhood to the duties of the bench, for which, more than for the bar, his taste, abilities and attainments had peculiarly fitted him.

quaintance with the law; and Clifton Claggett, whom Gov. Smith had repeatedly refused to nominate for the bench, but who had received the appointment from one of his democratic successors, belonged to the profession, but was too weak a judge to be looked up to by the bar with respect.

In June, 1813, the federalists being then in power, an act of the legislature was passed, by which the old courts were abolished, and every superior and inferior judge in the state was thrown out of office. There were confessedly, in the old system, serious imperfections, which were remedied by the new, especially in allowing jury trials to be conducted by a single judge, and in making provision for a law term, but the main object in making the change undoubtedly was to get rid of incompetent judges. It was a bold stroke, not, in all its extent, sanctioned by the leading men at the bar, and directly at variance with what, throughout the United States, had been the avowed principles of the conservative party. There was nothing on which they had professed to depend so much for the stability of our government, as a judiciary which should be, as far as practicable, independent of popular or legislative interference; and here, by a single act of theirs, every judge in the state had been displaced. If the object were to reform the court, why not change it without removing the judges? If to remove the judges, why not remove them in the way the constitution had provided, by address from the legislative to the executive department? Or if both purposes were to be answered, why not let each be done in the way which the constitution had

pointed out? In a government like ours, there is nothing from which we have more to apprehend than the disposition on the part of the people to break through established safeguards, in order to get rid of some pressing but temporary evil. In their impatience under a present infliction, they forget the flood of disorders that may be let in through a single breach of the constitution. It is, therefore, particularly incumbent on the leading men in the conservative party to bear long with evils, which must in time die out of themselves, before they consent to do that which may so much as seem to sanction such a course. In this particular case, however, it must be remembered that as far as precedent could go to establish a construction of the constitution, congress, in abolishing the United States' circuit court, and the legislature of Massachusetts, in abolishing their court of common pleas, had given ample authority for this act, and that whatever might have been the course most consistent with the principles of the federalists, their opponents had no reason to complain of what had been done; since it was but following an example which they, under similar circumstances, had most heartily approved.

The judiciary act of 1813, was a thoroughly radical measure, adopted by a party, who appear to have been surprised at finding themselves again in power, and who, by this act, began to open the way for their final and decisive overthrow. The ablest lawyers, who had seen the defects of the old system, and labored for some change as absolutely necessary, were hardly prepared for such a change. The democratic

party, who viewed the act as utterly unconstitutional, threatened a civil revolution in the state. On all sides, it was considered impossible for the new court to get under weigh, unless Mr. Smith would consent to be the chief justice. To him it was a source of extreme perplexity and vexation. He heartily disapproved of what had been done, and yet by consenting to be placed at the head of the new judiciary, he must expect to encounter all the difficulties, and to bear all the odium connected with it. In a pecuniary point of view it was a great sacrifice, since his income at the bar was more than three times what it would be upon the bench,[1] and his circumstances at that time were such as to make this a matter of considerable consequence to him. Governor Gilman was exceedingly anxious that he should accept the office, but could get at first no definite answer. Mr. Mason, then a senator in congress, in a letter to Mr. Smith, dated Washington, July 6, 1813, says: "My only fear is respecting your acceptance. I am confident the success of the system will depend on you. Should you decline, I cannot see how it will get into operation. . . . . I hope you will find no objection to accepting the office with the intention of retaining it permanently. At all events, you must in my opinion accept and hold it for a time, or prepare to see disappointment and confusion ensue. . . . . I will only add that Mr. Webster and others here, entirely agree with me in the wishes I have expressed on this sub-

[1] By the act of 1813, the salary of the chief justice was fifteen hundred dollars, that of the associate judges, twelve hundred.

ject." In another letter, Mr. Mason says: "When about a fortnight ago I sent you my advice respecting your duty in a very important particular, I intended soon to have written again. I had not vanity enough to suppose I should have much influence with you, but I thought the course you adopted so important to the community, that I could not refrain from expressing my wishes. I see, by the public papers, you have been appointed chief justice; I hope I shall soon see that you have accepted. Nothing else will put down the clamor raised against the system. Should you decline I think I see danger of confusion. I say this with the utmost sincerity. I have seen all the newspapers, and been informed of the feelings of the democratic party."

In his reply to these letters, dated July 26, Mr. Smith says: "I would hardly believe that anything could have given me so much perplexity as this . . . . . (you may fill this up with any epithets you choose) new judiciary act has done. Before I received your letter I had come to the same conclusion you seem to have done.

"I need not state to you the pros and cons; you will easily conceive of them all, and it would be a very long letter as well as a very dull one to state them. It is only one year, and if it please heaven, I may still have time enough to acquire the little that I need.

"I verily believe our path is beset with difficulties — our members in the legislature were chock full of courage when they were at Concord, stuffing themselves with brandy, and each other with big swelling

words of their own importance. But when they got home and came to be sober, the scene was sadly changed; they were most piteously frightened, and others, including—*et id genus omne*, ingenuously taking advantage of the panic, have seized those pure vehicles, the Gazette and Patriot, and continue pouring out on the public, essay upon essay, paragraph upon paragraph, alternately coaxing and bullying. I sincerely believe if they (the general court,) could get back the act, they would see the devil have it before they ever passed another such. Judge Livermore is here and accepts. I have just received a letter from Ellis, in which he proposes to embark on the stormy sea, if I will."

The following letter to his old friend, Timothy Farrar, explains his feelings more fully:

"Exeter, 26th July, 1813. Dear Sir: I could not but be flattered by your letter of the 19th. There certainly is no man, whose opinions would weigh more with me, or whose wishes I should have more pleasure in gratifying, than yours. Before I received your letter, I had however determined on the course I ought to take. I hope it will meet your approbation. For the greater and better portion of my life I have pursued that course which the public were pleased to direct, and it has always been to me more troublesome and less profitable than the one I had chosen for myself. When this same public were pleased, three years ago, to say that they had no farther occasion for my services, I concluded that I might safely calculate on the little of life that remained, as my own. At my age and with slender

health, it would have been presumptuous to have counted on riches or length of days. My success has more than answered my expectations, and I have never entertained the thought of quitting the shade which Providence seemed to have provided for me. I found it necessary to pursue the business of my profession a little longer, and it has not been irksome to me. The responsibility attached to the office of judge, and especially of chief justice, pressed heavily on me when I had more strength and much greater zeal than I have now. No man was ever more sincere in his endeavors to fulfil the duties of an appointment, than I was.

"You can form a correct opinion of the difficulties with which a judge has to contend. In looking back, I see abundant matter for mortification; but these retrospections give me no pain, because I always intended well, and never spared any labor. I hope it will not be thought vain to say, that when the public and I fell out, I did not consider myself as owing them anything. They had no claims on me, and I was as desirous as they could be that our separation should last forever. As to the past, I was disposed with all my heart to offset any little slights or ill-usage on their part, against the many errors (none of them intentional) and imperfections they must have discovered in me. But nothing was farther from my thoughts than to open a new account. Under these circumstances (and it would be taxing you too severely to state all my objections to a renewal of public life,) you can form some idea of the perplexity which this new judiciary act has occasioned me.

A very bold step has been taken, in which I had no agency, and as to which I was not even consulted. It is a step, too, which I should not have advised, though two things have been gained by it of great consequence, the trial of jury causes before a single judge of the supreme court, and the chance of obtaining better men than the old system was calculated generally to give for the common pleas bench. But the step has been taken, and if it does not succeed well, it will do an infinite deal of mischief.

"I have been given to understand, from several quarters, that many people are pleased to suppose that my services at this time are needed, and that, if they are withholden, it will weaken a cause to which, from sincere conviction, I have always given my feeble support, and add strength to a cause already too strong. If this experiment should not succeed, it will destroy all hopes of any improvement in our judicial system in our day. Except so far as regards myself, there is doubtless weight in these observations. At the same time it is equally true that I cannot hold the office of chief justice with the salary annexed to it. I have made such arrangements on the score of expense, &c., as forbids it. I never will consent to be dependent as a public or private man. Besides, ever since the people of Massachusetts have done their duty on this subject, I have persuaded myself that the honor of the state, their interest, the nature of the office, its duties, to say nothing about its dignity, require a much higher salary, one which shall at all times command the services of those best qualified. I have persuaded myself, also, that it

may do some good to the state, and have some tendency perhaps in the end to procure better salaries for others, if I avow these sentiments and act upon them. It is not necessary for the state, and as little for me, that I should be a judge, but it is my sincere desire that the office should be raised; because I am persuaded that the character of our judiciary will rise with it. I am willing to be thought avaricious, (which I am not,) and to be evilly spoken of, if it will conduce to this end. I know this is not the road to popularity, and I do not like it the worse on that account.

"Taking everything into consideration, I have concluded for the present to accept the office and hold it for a year. It is every way a sacrifice. The pecuniary one I regard the least. If it please Heaven, I shall have, after that, time enough to acquire in my profession the small sum I need. Next year the legislature will have an opportunity of knowing and expressing the public sentiment on the subject, and every one will be convinced that my continuance is of no consequence. In taking this step, it did not escape me that standing aloof at this critical moment would expose me, among a certain class of men, to the suspicion of acting under the influence of resentment for supposed ill treatment. I would make a sacrifice at any time rather than incur such suspicions, though conscious I did not deserve them. But the truth is, I feel nothing of all this. I will engage at any time to forget ill treatment as soon as its authors forget it, and to forgive it much sooner.

"I have said a great deal more than I intended,

but the subject interests me, and there are few people to whom one can speak unreservedly; so that you may think yourself well off that I have said no more."

Influenced by these considerations, Mr. Smith accepted the office, with Arthur Livermore (the late chief justice,) and Caleb Ellis for associates. There can be no doubt that he had a perfect right to accept the office; since whatever may be thought of the act by which the old superior court was abolished, the legislature was unquestionably authorized by the constitution to establish such new courts as it might see fit. But Messrs. Evans and Claggett, of the old court, regarding as unconstitutional the act by which their offices had been taken from them, determined still to go on in the performance of their judicial duties, as if no such act had been passed. The democratic papers threatened to maintain by violence, if necessary, the authority of the old judiciary, and private letters were received by Judge Smith, urging him, if he would avoid a civil war, to decline accepting the office. These threats, of course, had no influence upon him. He felt the delicacy of his situation, and, foreseeing, prepared himself to meet the difficulties and embarrassments that were to be thrown in his way. The first term of the court was to be holden at Dover, in Strafford county, and it was thought best that it should be opened by Judge Livermore, as he had been chief justice in the old superior court, and seemed to be entirely satisfied with the present arrangement. On Tuesday morning, September 7, he reached Dover,

at about nine o'clock, and finding his old associates, Messrs. Evans and Claggett there, with the determination of holding their court at the same time and place appointed for his, he compromised the matter, by agreeing that they should have the court-house in the forenoon, and he in the afternoon. This compromise seemed unnecessary, as the sheriff, clerk, and other officers were on his side, so that when Messrs. Evans and Claggett met, they had no grand jury, and no means of carrying on the business of the court. They, however, appointed a clerk, and Mr. Evans delivered a long address, condemning the late act of the legislature, and then adjourned till ten o'clock the next morning. In the afternoon Judge Livermore held his court, and, after the usual charge to the grand jury, observing that he had a communication to make to the people, he, to the astonishment of all present, made a strong and vehement address against the act under which he held his office, condemning it as unconstitutional, and arraigning the motives of the legislature that passed it, in terms exceedingly harsh and severe. He then adjourned the court till nine the next morning. In the morning he agreed with Evans and Claggett that they should take his hour and place, and he went to the meeting-house, where he continued from day to day, till they had finally adjourned. During the second week, the chief justice was present, and went on with the business of the court unmolested.

The next session of the supreme judicial court, which was at Exeter, the third Tuesday in September, was holden by the chief justice and Judge Ellis.

Soon after they had taken their seats upon the bench, Messrs. Evans and Claggett entered the court-house, and seated themselves, one on the right, the other on the left, of the judges. The court was organized, as usual, by the chief justice, although his directions were all countermanded, and the sheriff refused to obey any but the late judges. For instance, after the clerk of the court had, at the request of the chief justice, administered the oath of office to the jurors, Mr. Evans ordered his clerk to repeat the ceremony, stating that the oath just administered was unauthorized and illegal. The chief justice expressed an opinion that this course could not be tolerated, and the jurors all refused to be sworn a second time. When the chief justice rose to charge the grand jury, he was interrupted by Mr. Evans, who said, "Gentlemen, the act recognizing the court that is now about to address you, is unconstitutional. We acknowledge that these men (Smith and Ellis) are judges by appointment, but not judges of the superior court. They may have an inferior jurisdiction; with this court they have nothing to do." The chief justice then delivered his charge, after which juries were organized, and the court proceeded to business, the defunct judges keeping their seats in silence. Judge Smith preserved throughout his usual suavity of manners, yielding to the caprices of Evans and Claggett, and permitting them to go through with any "ceremony," as he termed it, "that they deemed it incumbent on them to perform."

In the afternoon the judges, finding the court-room occupied, went into another part of the house,

and proceeded with the business before them, as if no interruption had taken place.

In Hillsborough county the same farce was enacted, and with very much the same results. Had Messrs. Evans and Claggett been able men, supported, as they were, by a powerful political party, the most serious consequences might have ensued; but, as it was, their feeble and foolish efforts served only to bring them into contempt. They lost the little hold they had previously had upon popular sympathy, and their appeals to the public did far more to prove their own incompetency, than the unconstitutionality of the act by which they had been superseded.[1] Great credit was due to Mr. Adams, the clerk, for his firm and judicious conduct, without which the embarrassments would have been almost insuperable. The forbearance, too, of the court, supported as it was by their distinguished and acknowledged ability, made a most favorable impression upon the public mind. "It was the aim of the chief justice and Judge Ellis," said Judge Smith, in his account of the pro-

[1] At Dover, an honest farmer, having heard Mr. Claggett in a written speech of several hours, laboring to prove the act of the legislature, which deprived the state of his services as a judge, a gross and flagrant violation of the constitution, observed, when he came out, that though the good man had failed to convince him that the representatives of the people had broken the constitution, he had satisfied him that he (the ex-judge) was never qualified for the office, and that whoever had appointed him, must have been as weak as himself, or very wicked. The following trifling anecdote from the newspapers of that day, as well as the above, may, like a mote in the air, show how the public sentiment was then turning. A good woman, on being told how Evans and Claggett persisted in holding their court, said, they seemed "very much like her old hen turkey, the eggs had all been taken away — still the old fool would keep sitting, and sitting, and sitting."

ceedings at Exeter, "to conduct with the utmost mildness, and to bear with any acts of rudeness, and even insult, offered to their persons, as far as they deemed consistent with the honor of the court and the administration of justice. They were willing to impute many things to ignorance and mistake."

After these ineffectual attempts to obstruct its proceedings, the new court was allowed to go on without farther molestation. A special session of the legislature was called by Governor Gilman, at which the sheriffs, who had refused to obey the orders of the supreme judicial court, were removed from office, but it was not thought expedient to pass any act with respect to Messrs. Evans and Claggett. The old court was left to die of inanition.

Judge Smith had accepted his office with the understanding that he should be permitted to give it up as soon as the new judiciary system had got fairly established, and in the summer of 1814 he was exceedingly desirous of handing in his resignation. But those in whose judgment he placed the greatest confidence, were altogether averse to his taking such a step. Judge Ellis, his intimate friend, whose clear intellect was united to a character as spotless as falls often to the lot of man, remonstrated against it, both on account of his private wishes and his regard for the public good. Mr. Sullivan, Mr. Mason, Mr. Webster, and indeed, almost without exception, the whole bar were of the same opinion. Mr. Mason, in a letter dated July 10, 1814, said: "I am sensible your situation the past year has been unpleasant and vexatious, and that the conduct of the

legislature has been very provoking. I am, however, of opinion, in which Mr. Webster concurs, that you cannot, consistently with your duty to the public, resign your seat. Your resignation would immediately throw the judiciary into utter confusion. By another instance of folly in our federal legislature, the council is so composed that no successor could be appointed. The council would agree to nobody the governor would agree to. The ghosts of Judges Evans and Claggett would again rise, and re-act the mad pranks of the last year. It is impossible to say what would be the event. The scene would be filled with nothing but disgrace, in which we should all share. If you will permit yourself fairly to consider the consequences, I think you cannot come to the determination of resigning. I never made loud claims to any extraordinary share of patriotism. But since you request me to consider what I would do in your situation, I do not hesitate to say that, if in your situation, and possessing your talents for discharging the duties of the situation, I would not, under existing circumstances, resign, the present year. I think you cannot do it without endangering your own character. Should you, contrary to my wishes and expectations, determine on a resignation, I sincerely fear that you, together with all good men in the state, would soon have ample cause of repentance."

These considerations were not to be resisted, and although an attempt in the legislature to increase his compensation had been unsuccessful, and he could continue in office only at great personal sacrifice, his

duty was too plain to be mistaken, and he remained in his place. His course was distinguished by the qualities which had before marked his judicial conduct, and notwithstanding the circumstances under which he had been appointed, he enjoyed the same confidence as before on the part both of the public and the bar.

In the spring of 1816, Judge Smith met with a severe loss in the death of his intimate friend and associate, Judge Ellis. There was no public man to whom he was more sincerely attached, or whom he remembered as long[1] as he lived, with warmer affection and respect. In his charge to the grand jury in 1816, the chief justice gave an interesting sketch of his friend's judicial character, marked by a deep and solemn sense of what he and the whole community had lost in his death.

In 1816, the republican party came again into power, and having never acquiesced in the judiciary act of 1813, as constitutional, one of their first measures was to rescind it, and Mr. Smith found himself again a practising lawyer. His business returned to him, and he was able, in a few years, to lay up the competency he had desired as a provision for old age. But another generation had come forward at the bar, some of whom took, perhaps, a malicious satisfaction

[1] When nearly twenty years afterwards, a young man, whose Christian name was Caleb Ellis, applied to be admitted as a beneficiary at Phillips Exeter Academy, Judge Smith asked, with a good deal of feeling, if any but a worthy youth could bear that name, and acknowledged that he could not help being, by this circumstance, prepossessed in favor of the application.

in goading and irritating as an advocate, one to whose authority as a judge, they had been obliged to submit. He had never been more able or a more formidable opponent than at this time; but he had spent too large a portion of his life in a different station to retain a keen relish for the warfare that belongs to the profession. It may be, too, that there was no great cordiality of feeling between himself and the newly appointed court. On one occasion, a smart young lawyer was indulging in the most unbecoming abuse, commenting on his personal appearance, and particularly on his old drab surtout, in a manner which the court plainly ought to have rebuked. After bearing it for some time, Mr. Smith, in that tone of cutting irony which he knew so well how to use, dryly said, "As the court consider this decent, I of course, am bound so to regard it." It is easy to understand how, under such circumstances, with the feelings and habits which he must have acquired as a judge, and the ill-natured allusions that were often made to his former position, the ordinary practice at the bar might have become exceedingly irksome to him. Once, on coming out of the court-house, he said to an old acquaintance, that if, on leaving this world he should be obliged, as a retribution for his sins, to resume the practice of the law, he should say with Cain, "My punishment is greater than I can bear."

The following anecdotes, which are told of Mr. Smith, savor more of the ready wit of the advocate than the severe truthfulness of the judge. In a cause which he was to argue, a man by the name of Haines was an important witness on the opposite side, and

many witnesses had been introduced to show that no reliance could be placed upon his testimony. In opposition to these witnesses, one Trueworthy Gove Dearborn, a man of some little consequence, testified that Haines was a man to be relied upon. Mr. Smith in his argument, speaking of the strong evidence against Haines's character, concluded by saying, "All who have ever known him, testify in the most decided manner that he is not to be trusted, except Trueworthy Gove Dearborn — a man just like him." This was spoken in the most contemptuous manner, and as if the witness were utterly unworthy of notice, not a word was added. Mr. Dearborn, as was natural enough, was exceedingly angry, and, determining to be revenged, went to Mr. Smith's lodgings, and told him that he should bear such insult and abuse from no man, however elevated his position. Mr. Smith, with a most good-humored and comic expression, replied, "What did I say? You testified that Haines was a man of excellent character, and I said that you were just like him."

Mr. Mason once told Mr. Smith that, having been recently looking over the criminal calendar of the English courts, he was surprised to find there so many persons bearing his name, and asked how it happened. "Oh," said he, "when they got into difficulty, they took the respectable name of Smith; but it generally turned out that their real name was Mason."

Mr. Smith lost the last cause that he ever argued. On coming out of the court-house, he said to some one near him, that if that fool of a P——, (one of his

witnesses,) had not sworn so badly, his client would have got his cause. The remark was repeated by some good-natured friend to Colonel P——, who after several years, and being reduced to extreme poverty, called on Mr. Smith. Having enjoyed himself very much during a long conversation with him, he mentioned what he understood Mr. Smith had said of him. Instantly, with a look of the greatest surprise, Mr. Smith inquired, "Now, Colonel P——, I put it to you to say, does that sound at all like me?" "No, it does not, and I always maintained that you never said it."

Whatever Mr. Smith may have found at this period of his life to vex and irritate him in the court-room, he never carried his troubles home; and in his practice there was always enough of serious and solid labor to give full employment to his mind. He delighted to investigate cases which put into requisition all his knowledge and strength, and he was retained in most of the important causes that came before the New Hampshire courts. Of these, the famous Dartmouth College case, was, undoubtedly, by far the most important, whether viewed in relation to the legal considerations and the serious consequences involved in it, the interest it awakened in the public mind, the manner in which it was connected with the political action of the day, or the learning and ability with which the rights of the college were maintained. President Brown, whose life of rare usefulness and yet greater promise, was closed by an early death, might well say, as he did in one of his last letters on the subject to Mr. Smith, "Whatever depends on

man, I know, is uncertain ; but from all I can learn here and elsewhere, I have a great degree of confidence, that the cause is gained. Should this be the event, (and indeed whether it be or not,) we shall always entertain a lively sense of gratitude to those gentlemen, who 'have stood in the gap,' and so nobly sustained the contest. And may we not forget our obligations to Him, who has bestowed on our wisest counsellors their talents, and by whom 'princes decree justice.'" The college, in 1819, passed a vote requesting each of the advocates, by whom their rights had been so ably maintained, to sit for his portrait ; but the funds of the institution were in such a state that the intention was allowed to pass for the deed, till, in 1835, it was carried into effect by one whom the poor and the fatherless, and he that was ready to perish, will remember with grateful benedictions at that hour when, of all our actions, the thought only of what we have done for others can bring consolation or support.[1]

[1] The advocates of the college were Jeremiah Smith, Jeremiah Mason, Daniel Webster, and Thomas Hopkinson.

CHAPTER X.

1820.

RETIRES FROM BUSINESS — FORTUNE — FAMILY — TEMPERAMENT — OCCUPATION IN RETIREMENT.

In 1820, having now reached the sixty-first year of his age, Judge Smith (for though no longer holding the office, he was always called by that title,) withdrew from the active duties of his profession, in order to spend the remainder of his days in those tranquil pursuits and enjoyments, which are the fitting close of a laborious life. Few men have retired from business with more ample resources for a useful, serene, and happy old age.

His health was better than it had been since he entered upon public life. His fortune, the fruit of his own industry and a judicious economy, through many years of public and private usefulness, was all that he desired. In early life he had been much interested in the business of his brother Samuel, a man of great enterprise, who did more, perhaps, than any other person, to introduce manufactures into New Hampshire. For more than ten years he

placed in his brother's hands all that he laid up from his profession. At a later period, when Samuel had become exceedingly embarrassed in his affairs, he volunteered, though expecting to suffer heavy losses by it, to be surety for him to the amount of all that he possessed; and when his brother's affairs had taken a more prosperous turn, in his final settlement, he gave him outright ten thousand dollars, having never at any time received a cent by way of profit from their connexion. Mrs. Smith was, on the death of her mother, entitled to a share of a considerable estate, but nothing was ever received except the privilege, and such her husband always considered it, of giving her two sisters a home for ten years. But in their domestic arrangements they had no foolish ambition, and exercising, at all times, a careful and judicious economy, they were able to lay up what was sufficient for their own wants, with something to spare for charity.

In his family Judge Smith was particularly fortunate. Mrs. Smith, a woman of good sense, and of a refined and delicate nature, though of a slender constitution, was always a devoted wife and faithful mother. Their son, William, born the 31st of August, 1799, was possessed of rare natural endowments, and, at the time when his father withdrew from the profession, gave promise of distinguished success. His life, if it could be given from its commencement to its close, would furnish a sad, but interesting and instructive example to that large class of young men, who, without fixed principles or confirmed habits of industry, hope by birth, genius, or

some rare combination of fortunate circumstances, to win the prizes of life. He had unusual quickness of parts, and while at Exeter Academy appeared to great advantage in his studies. He entered Harvard College when very young, and had not strength to resist the unfavorable influences of the place, but neglected his lessons, was preyed upon by evil associates, wasted his time and money, and without any decidedly vicious habits, was twice suspended during his college course, and finally took his unhonored degree in 1817. His letters, written to his friends at home during this time, show the deep wretchedness of such a life. He was constantly resolving, but without the energy to carry his resolutions into effect; suffering all the anguish of repentance, with none of its better fruits, but repenting to-day, only to fall and repent again more bitterly to-morrow; never losing his sense of right, his generous feelings, or his yearning after intellectual greatness, but conscious all the while of powers to which he was doing no justice, and of expectations on the part of his friends, which he was cruelly disappointing; yet weak in purpose, and on account of that weakness doomed to give up all that he most valued and desired. He had no taste for bad company, but had not the manliness to resist and overcome its evil influences. His sympathies were too quick for his safety, and though he appreciated and enjoyed the best society, yet he was not secure an hour when beyond its reach; but through the infirmity of his will, the strength of his social feelings and his love of approbation, was carried away by the cur-

rent into which he happened to fall. His father saw, with deep concern, how all this must end, and his letters, a singular union of kindness and severity, of wise counsel, tender affection, and sharp rebuke, evincing that he was always ready to forgive and overlook the past, as soon as any promise of amendment could be seen, show how deeply his feelings were wounded, and how much more he cared for the good of his child, than for any ambitious schemes that he might have formed in connexion with him.

Near the end of William's first year in college, his father, having heard of his neglecting his exercises, after speaking of the ruin that must be the mournful but necessary consequence of such habits, thus warns and expostulates: "Need I remind you that you will not be the only sufferer? I know that errors in conduct are seldom single. They are a fruitful family. The waste of money leads to association with the idle and dissipated. . . . . It is natural that I should see beyond the first act in this drama, and it fills me with pain and mortification I cannot describe, and which none but a parent can fully understand. . . . Write to me freely, fully. Let me see and know enough of your heart to hope that the next year, if you should have a next, will give me more pleasure than the last. It is not disgraceful to you to need a faithful friend, but extremely wrong to decline that aid when offered, especially by your most affectionate father."

The following letter to Mrs. Smith, will give some idea of what he suffered.

"Dover, Tuesday evening. My dear wife: The

unpleasant feelings I had when I left you, did not forsake me on the road. I, even I, made a great mistake, in taking a sleigh. The road was ten times worse than I expected. . . . I was near five hours on the road, and travelled on foot nearly half the way. This heated me, and the evening was sharp, so that I took cold, and am rheumatic. But all these things are not worth regarding ; they concern myself only, and will soon be over. But my mind is occupied with W. When I am from him, I do not feel less grieved for the past and less gloomy as to the future ; but it is of a different and milder sort. If children could only know what their parents feel, when they see them travelling in a road which they think leads to ruin, they would pause a little before they ventured farther in a path with which they cannot be acquainted. I could forgive one fault, and another, and another ; but a regular series from bad to worse, takes away all hope. It is not yet, thank God, come to that. But everything tends that way. All that is wanting is time. If the heart is callous at sixteen, what will it be at twenty-one ? If a small paltry gratification outweighs a parent's authority, displeasure, unhappiness ; if it leads to the sacrifice of truth, honor, honesty, what will be the end thereof, when the appetite increases and the power of resistance weakens ?

" I know you will say, why indulge these melancholy forebodings ? I do not willingly indulge them. Gladly would I exchange them for more pleasurable sensations. But what shall I gain by shutting my eyes and stopping my ears ? Do not deceive me,

but give me reason on my return to hope. But I must have reason, evidence. I cannot, if I would, believe against evidence. It is not in my nature to do so. I am too old to change ; I hope he is not. Show him this. Ask him to give me a pledge, security for his good conduct. At present I will accept, gladly accept, real contrition, and will trust to time to prove it genuine. But then good works must follow immediately and continuedly. He will, perhaps, wonder that I speak of his past conduct in such severe terms. I see the future. I could forgive the past. I thought I had a great deal to say, but I find I have only one single idea. I can think of nothing else. It is eleven o'clock at night. God bless you all. Heaven knows that I fervently offer up this prayer, and include W. in it."

After leaving college, William read law in his father's office, being then perfectly correct in his conduct. As it respects reading connected with his profession, he was very negligent until about three months before he was admitted to the bar, when his father reminded him how short the time was before his examination, and how ignorant he was of the subjects on which he was to be examined. From that time till his admittance, he applied himself with diligence, and his father was astonished at the amount of knowledge he acquired in so short a time. No young man of his age was more generally popular, and there was no one of whom higher expectations were formed. He was frank and generous to excess, winning in his manners, animated and interesting in conversation, reading with a surprising

rapidity, yet remembering what he read, and having always at hand a large and various supply of interesting knowledge, while his quick and active sympathies, with his entire freedom from anything like pride or haughtiness, found their way to the hearts of the poor and friendless who might come within his reach. He was a general favorite in society, and was chosen a member of the New Hampshire legislature when only twenty-two years old, being, as his sister said with becoming pride in writing to a friend, one of the youngest members that had ever been chosen to that office.

But the charm of Judge Smith's home, and that which made it what it was to him, and those who visited it for years, was his daughter Ariana. The connection between her and her father was the most beautiful that I have ever known between parent and child. There was a perfect harmony, a sympathy and union, such as we read of in books rather than hope to find in real life. Their characters were formed after the same model, save only that hers was subdued by the grace and softness of her sex. They read, conversed, travelled together, she engaging in whatever might add to his comfort, and he rejoicing as heartily in hers. She was born the 28th of December, 1797. The unusual name she bore was inherited through a line of grandmothers from a Bohemian branch of her mother's family. Existence was to her a continued romance. She laughed, wept, studied, went through the regular routine of household cares, had her little weaknesses, was not without some portion of female vanity, loved attention, and

was not indifferent to dress, nor to anything in which other girls took an interest, and yet she was like no one else. Her personal appearance was peculiar to herself. Her clear white complexion, contrasting with her long black hair and eye-lashes, her large blue eyes, looking out with animation from a countenance always calm, indicating at the same time excitement and repose, were such as belonged to no one else. Her voice, subdued and passionless, contrasted singularly with the fervor of her words. Her devotion to domestic duties, and particularly to her mother through years of painful disease, might, but for the peculiar elasticity of her mind, have worn her down, yet to the last she was like one whose life had been a perpetual sunshine. Her enthusiasm might have betrayed her into indiscretions but for the prudent self-control that never forsook her; and the rare good sense, that ran through all her conduct, might have made her common-place but for the enthusiasm of her nature. The great extent of her reading, and the accuracy of her knowledge in the more solid as well as in the lighter branches of literature, might have made her pedantic, were it not, as her father said, that she was more studious to conceal than to exhibit her accomplishments. "She had," he said,[1] when his heart was wrung with the anguish of bereavement, "a mind intelligent and ingenuous, having learning enough to give refinement to her taste, and far too much taste to make pretensions to learning. She had a feminine high-minded-

[1] Quoting, in part, from Moore's Byron.

ness." "She often shined in conversation, but never strove to shine." "As far as regards literature, she never (in conversation) aimed at doing her best; and yet she was not indifferent to the opinion of her father and her friends." Her almost passionate love of society, and the attentions with which she was loaded, when in the fashionable world, by those whose attentions are most flattering to a woman of sense and refinement, might have made her giddy; her love of nature, of rural life, and the simple intercourse of the country, might have made her shy and timid, but for the genuineness of her feelings and the simplicity of her character. "I rely," said her father, "with entire confidence on your good taste and discretion — two things oftener united than is commonly thought." At a large party in the city it might seem as if she had no heart or thought for anything else; but she gladly returned to the quiet home, where almost all her time was spent, and there appeared as if she had never been absent, or had gone abroad only to bring back new treasures for the enjoyment of her friends. Substantial books were read, kind acts and serious duties performed, as if they were only a pastime or amusement. Nothing was ever said of them, and therefore her letters and her usual intercourse with society gave only the most superficial view of her mind. Her charities, like the charities of Heaven, came often without revealing the hand that brought them. She was equally at home among different classes of people. In conversation with the most eminent and gifted she betrayed no consciousness of self-distrust, and with

the humblest she exhibited no marks of pride and no appearance of condescension, but talked and sympathized with them as friends. The woman who for several years had lived in the house as a cook, she regarded not merely as a faithful servant, but as a sister. The poor student at the academy, bashful, unformed, and desponding, soon felt at ease with her, and, learning to look with more respect upon himself, began to feel new powers and new hopes quickening within him. The remarkable feature of her mind, however, that which stood out above all the rest, which threw its brightness over her whole life, and which neither disappointment, nor sickness nor sorrow could ever shade, was the disposition not only to see all that there was of excellence around her, but to view men and things in the light of their virtues rather than through their faults. Her thoughts and conversation were not infected by the sickly atmosphere, nor her spirit darkened by the sins, of society. She had too much penetration to be ignorant of what was disagreeable or wrong, but the evil she saw did not abide with her, and left no mark either upon her countenance or her mind. I do not remember ever to have received from her an unpleasant or unfavorable impression of any one; and in all her letters, written, as many of them were, with the most entire and child-like unreserve, I have not found, except in a single instance, a remark which could be construed into anything like unkindness or a want of respect for others. This charity which thinketh no evil, and through which the soul, like a healthy eye, is kept

pure from outward touch, was not in her case a cherished principle, but rather an original endowment, disturbed sometimes by momentary jealousies and rivalships, by wrongs received or witnessed, but quickly recovering itself, and going cheerfully along its pleasant path.

Miss Smith had grown up like other girls, except that she was educated almost without any formal system of instruction. Sometimes a student in her father's office would instruct her, and she spent a short time at school at Portsmouth, where she was not subjected to the uncertain influences of a boarding-house, but enjoyed the kind and almost parental hospitality of Mr. and Mrs. Mason. But while her father was at home she was his constant companion, reading the same books, interested in whatever concerned or interested him, her taste and character formed more through his influence than through all others combined. As a young girl, she might be seen romping through the fields, riding upon a load of hay, or assisting her mother, who was extremely fond of gardening, and who, during the summer, spent no small portion of her time in the open air, adorning the grounds. Books, however, were Ariana's especial delight, and when she first grew up, her parents would say to each other, "What can we do for this girl? What can we buy for her? She cares nothing about dress as other girls do." But this indifference to dress, and exclusive preference for books, passed away as she mingled more with the world.

Ariana's letters to her young friends show an en-

thusiastic and romantic attachment to her father. May 11, 1820. "I particularly like the end of May, and beginning of June, to receive my friends, because my father is then certainly at home." April 10, 1821. "My father leaves us next Monday, for many weeks. I hope you will pity our desolate state, and enliven us by frequent letters." July 17, 1821. "My dear Mary, you don't know how much father misses the fair hand that used to shower upon him rose-buds last summer. He continues, however, to wear a bouquet, which is regularly changed twice a day. . . . . Coming out of church Sunday, and looking round to see father, I recognized him by his beautiful nosegay of pinks and rose-buds." May 23, 1822. "I am writing with a pen of father's. What gallant and sincere sayings it would trace, if guided by its master's hand; but he is long since asleep, and I must content myself with sending our plain and unornamented thanks, love, respects, good wishes, &c. to all your family." [1]

In 1809, Judge Smith had moved a little out of the village to an estate which he had recently purchased, and on which he continued to live more than thirty years. It was a pleasant spot, with deep woods in the rear, long fields and pastures extending above, and the town of Exeter below; a place of almost perfect retirement, and yet near the abodes of men.

[1] These extracts are all from letters to Miss Mary J. Holmes, daughter of the Rev. Abiel Holmes, D. D., of Cambridge, and afterwards the wife of Usher Parsons, M. D., of Providence. She died in the summer of 1824.

As time passed on, new beauties were constantly growing up under Mrs. Smith's care, and every tree, shrub, vine and flower, the arbors, and the walks leading back into an almost measureless extent of wood, bore marks of her taste, and were the fruits of her constant personal attention. The pleasantest part of the house, and indeed of the estate, was the library, a large room filled with books, which, while it served as an office for the judge, was always, but more especially after he had given up business, open to all the family and their visiters. Here the daughter delighted to store her mind with knowledge; here the judge went through his severest labors, and here their "idle hours" were "not idly spent," while some new work of taste or fancy was read aloud, and the reading often suspended to ascertain the exact meaning or pronunciation of some doubtful word, to search for information that might clear up some dark allusion, or to make room for such remarks as were suggested by what they read.[1]

Such was Judge Smith's family when he retired

[1] No account of Judge Smith's family at that time would be complete, which failed to make honorable mention of the cats, which varied at different times, from one to five in number. The judge would take up half an hour or more at the breakfast table, in detailing, perhaps, a long conversation which had been overheard among these interesting inmates, describing sometimes their own troubles or loves, and sometimes commenting on the motives and conduct of others. The humor of these extempore fables was often irresistible, and not a little sly satire and instruction as well as amusement, was administered by the sagacious cats to other members of the household. From J. S. to his daughter, January, 1818: "The fifth member of our fireside party says, or seems to say, that she wishes you at home, and regrets that she was not taught to write, that she might communicate with you at Boston. So you see you are kindly remembered by all."

from business, and very few are the households which contain such materials for instruction and happiness, or such resources for the autumn of life. There was, withal, a sort of romantic interest, which I have heard described by young persons, who occasionally visited them from abroad, as perfectly fascinating. "I first became acquainted with the family," says a lady who knew well how to appreciate them, "in 1818, and made a little visit at their happy home, which was repeated in 1824, and the image upon the part of the judge, of fatherly tenderness and conjugal reverence as well as affection, of filial devotion in Ariana, and of matronly composure in Mrs. Smith, united with so intimate a blending of her own being in that of her husband and children, as to render her almost unconscious of her separate existence, has remained indelibly impressed on my memory, as one of the loveliest pictures of domestic felicity, which it was ever my lot to witness; while the judge's genial humor and flashing wit threw a halo round the scene, which illumined it like sunlight." It is believed that the following from a venerable divine[1] of great learning, ability and social worth, would be a fair transcript of the feelings of many, if not most, of Judge Smith's visiters. "The delightful visit at your hospitable mansion, and the rich feasting of the soul, 'from early morn till noon of night,' three days in succession, will not soon be forgotten, whatever may be the future scenes through which I have to pass."

Books were the great resource of Judge Smith's

[1] The Rev. James Murdock, D. D.

private hours. In the busiest period, he had always found time for the cultivation of letters, and except some of the poets, for whom he had little taste, no department of literature was left unexplored. He had great confidence in the ancient classics as a branch of liberal culture, and preserved to the last a keen relish for classical allusions and expressions. He however attributed to them no miraculous efficacy. "Greek and Latin," he said, "cannot give men sense, if they have it not in their native language." He was intimately acquainted with the whole field of English literature, entering upon its lighter branches as a pastime, and reading history with the eye of a lawyer, statesman, philosopher and man. But of all the departments of knowledge, out of his profession, there was none for which he had so strong an original turn, and to which he had given so much attention as theology. Few professed theologians have so thoroughly investigated the grounds of natural and revealed religion, or the distinctive features of Christianity. Nor was it merely as an intellectual study, that he had looked into these subjects. Whatever may have been sometimes inferred from his peculiar mode of expression, he had always clear convictions of the truth, and an unfeigned reverence for the principles of our faith. Though for many years the member of a church, he was never loud in his religious professions. Indeed he was so disgusted by the levity with which the most sacred of names, and the most solemn of subjects are sometimes bandied about by religious people, and he so shrunk from every semblance of ostentation or cant, that it was not easy to see at once

from his conversation or outward conduct how deeply these things entered into his character.[1]

Judge Smith's temperament was one of unbroken cheerfulness.[2] He had gone through the assaults of party violence, he had borne the honors, and sometimes experienced the disappointments of public life, but the prevailing sentiment, as he looked back on the past, was one of cheerful satisfaction and gratitude. He carried with him the experience of a long life, and the memory of the great men who had left the stage, but who were still companions of his thoughts. Whatever he may have been in the keenness of personal rivalship or the heat of political strife, he retained but slightly the sense of personal injury, and towards many of his political opponents, cherished feelings of unusual kindness and respect. He was not haunted by the consciousness of having sacrificed his sense of duty or the public good, to party ends or personal ambition; and to be at peace with one's self, is a wonderful preservative of kind feelings towards others.

[1] In a letter to his daughter, August 5, 1810, he says, "I hope you attend church regularly, my dear. It is no matter what the form of religion is, but it is absolutely necessary that we should have the substance, and though going to church is not religion, it is one of the means to become religious."

[2] These lines, taken from Judge Smith's common-place book, seem to have been copied there, because they so well describe his own character:

"Then, for the fabric of my mind,
'T is mair to mirth than grief inclined;
I rather choose to laugh at folly
Than show dislike by melancholy;
Weel judging a sour, heavy face,
Is not the truest mark of grace."

Thus in the midst of abundance, with his family about him, and his strength unimpaired, Judge Smith withdrew from the labors and cares of his profession, carrying with him to his retreat those intellectual tastes and attainments which dignify the leisure and adorn the retirement of age, and which, when joined to a clear conscience and a religious trust, may furnish inexhaustible sources of occupation, amusement and thought; enabling him, who possesses them, to be still extensively useful to others here, and to prepare for that world in which the distinctions, possessions, and even the intellectual acquirements of the present life shall be of small account.

Judge Smith gave some attention to agriculture, and it took him two or three years to finish all the professional engagements which he had upon his hands. In addition to this, it was no small matter to collect the debts that were due to him from different parts of the state. The following extracts from business letters to various persons, in respect to small sums which he had requested them to collect, show how many other feelings mingled with those of the collector.

From a letter to William Gordon, Esq., the son of his old and highly valued friend of the same name. January 22, 1821. "But assuredly I have received enough. The difference is not a compensation for your trouble. Let this acquit you of all demands, and carry with it my respects to your good mother, and thanks from myself for your faithful agency in a few small things. I hope you will be faithful in more important concerns."

To the Hon. B. J. Gilbert. Feb. 25, 1823. "Being dead in law, I am settling up as well as I can my business accounts, &c., while living. I send you minutes of my fees, &c., in three actions. The sums are entirely at your disposal; fix them as they should be. . . . I am desirous, as you may well suppose, of shuffling off this mortal coil and gross concern of pelf, so as to have nothing left but to live intellectually, and, I hope, with due reference to the next state in the chain of being, which, to a man of sixty-three, cannot be far off. I shall always cherish the kindest remembrances of your acts and sayings, and the liveliest wishes for your happiness. Let there be no black spot in your escutcheon. I am wonderfully well, the better that I am no longer a sweeper in the Augean stable, or any other stable. I sweep my own nice, snug, warm room, surrounded by a goodly number of excellent old, silent friends, whom I read and enjoy much. Nothing would give me more pleasure than to find occasionally one talking one, videlicet yourself. Oh Baron, Baron, (*non Roma*) *quando te aspiciam.*"

To Richard Fletcher, Esq., Feb. 25, 1823. "I need not say to you, (one of the initiated,) that this is the beggarly account of miserable remnants and sweepings of a lawyer's office. It proves the end is near, nay, already come, and I am most wonderfully well."

To John Nelson, Esq., Jan. 4, 1826. "I have been always in the habit of looking back at the beginning of every new year. You will therefore excuse my giving you this trouble. I have still many shreds and parings scattered about, which I am

anxious to gather, and form into a garment for the winter of age."

To the Hon. E. S. L. Livermore. Feb. 6, 1826. "Our friend lately assured me that all was well on the score of taxes, &c., but as he at the same time assured me he was honest, and I might safely rely on him, (*cum multis aliis*) I immediately began to feel suspicious."

[These suspicions proved just; and in general is there not ground for mistrust, when extraordinary professions of sincerity or honesty are needlessly made?]

To H. G. Cilley, Esq. Jan. 1, 1827. "I have a judgment against R. B. Senior. The old man declined dying at that time. His sons applied for guardianship over him, to enable them to get his estate sooner than by the course of nature. I resisted, succeeded, and they got away his estate by other ways and means. I have also a note against honest D. H. His hopes from death of father-in-law are so far realized that the good old man is dead, but as to all beyond, (I do not mean the effect of death on the colonel, but on H.) I am in the situation of the United States' circuit court, Jay and others, as Sewall pleasantly told them, 'Your honors mean well, but your honors don't know.' I have also a note against N. D., another honest man of your town, for money lent years ago. He pleads poverty, the honestest plea he ever made. I have pretty many other debts in the same doleful situation. Oh, how I have been gulled by mankind! But these are all that honor Deerfield with their permanent residence."

A letter to Henry H. Fuller, Esq. may serve as a specimen of Judge Smith's sprightliness, as well as of his remarkable minuteness in little things. "Dear sir: I want two pairs of castors or rollers, to make my bed move easily forward and back, and cannot find such as I want nearer than Mr. Quincy's great city of Boston, and cannot think of a less personage to procure them for me than H. H. Fuller, Esq., counsellor at law, &c. &c. They are not to be swivelled so as to go zigzag. I am done with all zigzagging, twisting, turning, &c., having left the profession, and am in the straight line of things, and want my bedstead to move back and forward in such a line. I prefer iron (cast) to copper or brass. I am, for the reason aforesaid, done with all brass composition, &c. They must be precisely on the plan of window-shutters, only larger; particularly and essentially, the roller must be at least an inch or an inch and a half, instead of a half inch in length; the diameter, larger or smaller, is of little consequence, and the gudgeon of the roller is fastened (i. e. plays) in a projection from the plate; the plate screws on to the shutter or leg of the bedstead. This fashion is preferred, because it will not raise the bedstead more than one-sixth of an inch, and, regarding the place into which the bedstead is to be placed, I am limited in height. It just occurs to me that I might at once have addressed myself to my friend Deacon May, *in sua arte;* but then I must leave out the joke on brass, &c., and, as Pilate said, 'What is written is written,' to which I add, 'and sent to my friend, and from his friend,' J. S."

Judge Smith, though he no longer practised the law as a profession, still kept up his interest in it. Writing to Mr. Webster, in 1826, respecting Edward Livingston's system of penal law for Louisiana, he says: "I think much better of the plan of this young state from the examination, than I had supposed I should. Indeed I think it does great credit to Mr. Livingston's learning, talents, and industry, and I have a strong desire to see and possess the whole. It has occurred to me that you, probably, have the same desire to possess these writings, and can without much trouble procure them for me. Since I have abandoned the law as a trade, I have looked a little into it as a science, and, I verily believe, have as much pleasure in it now as formerly." This desire was communicated by Mr. Webster to Mr. Livingston, who forwarded a copy of his work, in its then imperfect state, to Judge Smith, with the request that he would assist him, by making "such suggestions as might occur to him on its perusal, either for correcting its errors, or supplying its omissions." To this Judge Smith replied: "A man of business can tell what he will do; he may safely promise. But a man of no business cannot safely promise that he will do anything, and still more any particular thing at any given time. Thus much I can say, I shall certainly read your work, and carefully too. I have read it, like bills in congress, for the first time. If, on the second reading, anything occurs which can possibly be useful to you, I will note it. My knitting-work, as my friend Ames used to express it, is to put down the New

England law, where we have allowed it to take the place of the English." I am not able to say whether any further communication was made, and indeed the subject is introduced here only as an illustration of the manner in which Judge Smith still kept up the study, if not the practice of the science, to which his life had been devoted. He continued to read the reports of interesting cases, and it was always pleasant to him to follow out an ingenious legal argument. It was a great satisfaction to him to see another, nay a third generation, coming on and showing themselves able not only to uphold, but to advance the cause of jurisprudence. He seldom appeared in the court-room. The last time, I think, that he heard a cause argued, was in Essex county, Massachusetts. Happening to be in Salem, during the session of the court, he went in to see how it would compare with former times. He heard Mr. Choate in one of his earnest and brilliantly logical arguments, and, though the style of speaking was not to his taste, he was satisfied that there had been no falling off in legal ability since the best days of the Massachusetts bar.

In 1824, the governor of New Hampshire wished to make Mr. Smith chief justice of the court of common pleas, that office being then vacant, but he was not willing to engage again in public life.

As in the law, so also in politics, though no longer an actor, Judge Smith still retained his interest, studying the subject as a science, and watching the course of events both in his own and foreign countries. The remarks scattered through his common-

place-book, on the public men and measures of the day, though often severe, were not, perhaps, more so than justice required, and were always, I believe, written without any personal feeling of unkindness. I well remember the flash of indignation with which he commented on President Jackson's policy, of making the places of all subordinate officers to depend on their political preferences. "I call up before my mind," he said, "Washington asking the advice of his cabinet in respect, for instance, to a district attorney for New Hampshire. One replies, 'A. is undoubtedly an honest, capable man, but he has done nothing for us, and his remaining there will have an unfavorable influence on your reëlection.' If anything could have made that great man so far forget himself as to draw his sword and thrust it through another, it would be a suggestion like this." Generally, however, Judge Smith was rather entertained than painfully affected, by the struggles and contortions of political parties, and his comments, whether in conversation or in writing, were little more than a species of amusement. For example, —

Quoting from Talleyrand: "The art of putting men in their proper places is, perhaps, the first in the science of government," he adds, "we do not always succeed — sometimes we send men to congress whom we ought to send to the state prison — place men on the bench whom we ought to set to the bar — men are seen busily and laboriously thumping the cushion, who ought to be thumping the anvil."

Speaking of Caligula's horse being made a consul, Judge Smith adds: "It was, perhaps, not an unex-

pected appointment — things naturally enough led to it — the time may come when we shall be little surprised to find a man elected governor who can neither read nor write. The horse-consul had a colleague, and our illiterate governor may have a good secretary, or . . . . may take him in keeping, and all go well."

"The government provided a place (a house, &c.) for their governor, Mr. Prince, in 1665, about two miles from the centre of Plymouth.[1] It was called 'Plain-dealing' — a very suitable name for the governor's residence. How would the name suit the place of residence of Governors —— —— ——? Would not E—— P—— G—— suit those governors better, as leading to no particular inquiries how far their official or private conduct bore resemblance to the name of their places of residence?

"The integrity of this dweller at Plain-dealing, we are told, was proverbial. Is that the case with ——, &c.? The dweller at Plain-dealing, (for I love to repeat the name,) was also distinguished for industry, energy, sound judgment, and his exertions for a fixed and competent support of an able and learned ministry. In many places a disposition prevailed, to neglect this important branch of public instruction, or to employ incompetent teachers. With the exception, perhaps, of industry, how will the three great governors, indicated above, compare with their brother of the smaller and more inconsiderable community dwelling at Plain-dealing? They

[1] Morton's Memorial.

doubtless greatly exceeded him in the length of their messages, the number and ardor of their professions of love for their dear constituents, and in the cultivation of all the arts deemed necessary in these more enlightened days, to secure a reëlection. Their poor simple brother seems to have relied altogether on integrity and plain-dealing, and, strange to relate, was more successful than they. It would be a curious sight to behold a modern governor, like Prince, leaving his acts to speak for themselves, placing all his dependence for the favor of his constituents on his goodness, on his integrity, industry, energy, sound judgment, and uniform and constant endeavors to diffuse through the community religious and moral instruction. I ween many would wonder at the sight, and be ready to cry, *quis novus gubernator!* The aforesaid three governors would naturally suspect him of a trick."

CHAPTER XI.

1820 — 1829.

WILLIAM SMITH — JOURNEY TO NIAGARA — MRS. SMITH'S DEATH — ARIANA, HER SICKNESS AND DEATH.

William Smith was, through life, an object of extreme solicitude to his father. He had hardly entered the profession of law when, at the age of twenty-two, he was chosen into the legislature, where he continued for three years. From this time his thoughts were given almost exclusively to politics. He loved excitement; and the sort of notoriety, that is so cheaply purchased by ready talents and shining accomplishments, without any great amount of knowledge, flattered at once his love of approbation and his aversion to severe and long-continued labor. He was brought into the society of the prominent young men throughout the state, and was a great favorite with them. But while he was congratulating himself on his success, his father foresaw that such a life must prove fatal to his hopes of distinction at the bar, and finally leave him impoverished in mind and

estate. He therefore did not cease to remonstrate with him, and to urge him to lay deep the foundations of knowledge, and form habits of industry and exactness, before he allowed himself to embark on the perilous sea of political contention. "A young man," he said, "of capabilities and promise is treated with attention above his deserts; he is rewarded for what he is to be; but when from imbecility of character, indolence, or dissipation, he remains stationary, or goes, or seems to go back, he is neglected and left to himself. He has no longer any flattering anticipations of the future. All the world see his future course, and already regard him as what he is to be. I wish I had the power to picture to your imagination yourself, after the world have discovered you are to be nobody — a weak man who, if he still retain the badge of a profession, is now in the rear of all his competitors. He never competed, so that every fellow stepped before him, at first treating him with a sort of good manners, but soon putting on the superiority of mind over mind, of knowledge over ignorance."

"If ambitious, what object greater than to be among the eminent at the bar?" — "Without a profession, what will you be when your patrimony is spent?" — "Importance of acquiring early instruction in a profession — for example, law; time necessary to master its intricacies." — "Those who begin late, never become masters."

These, and other remarks of a similar kind, I find on loose scraps of paper. As some men think aloud in broken sentences, so Judge Smith seems to have had

the habit of thinking with a pen, involuntarily writing down what was intended for no eye but his, and sometimes not even for that. The following unfinished draught carries its own explanation with it. It bears no date, but must have been written in 1823, or early in 1824. "I agree that it is extremely natural that you should desire to be at Concord at this time. But I am opposed to the gratification of that very natural desire, because I think it will be hurtful to your advancement in life. You are now too much engaged in politics, and too little in your profession, and, if there is no change, I foresee that the evil must increase, and the chance of being a lawyer diminish. It does not require the gift of prophecy to determine what will be the end thereof. These two branches of study, or pursuit, cannot both have your supreme regard. You may be an active politician and a nominal lawyer. But it is as certain as fate, that you will soon cease to be a lawyer even in name. To me it is equally certain, that on the best calculation you cannot live by politics, and the chances are that you do not succeed. Your profession is the only way in which you can succeed, and you have yet to learn the law both as a science and an art. I would not magnify the difficulties to be overcome, but sure I am they will call for your whole strength, and if you do not very soon set about the work, I would advise you to abandon it, and do yourself the justice at once to avow it. You may deceive yourself, but I see plainly that your chances to be respectable in your profession are less than they were two years ago; first, because you

are no farther advanced in law knowledge, I mean technical law; and secondly, less inclined to the study, because more engaged in politics. If you do not love the law at twenty-four, I see no reason to believe you will at twenty-six, eight, or thirty. The small sum expended on this excursion, and the time spent, are nothing, absolutely nothing in themselves; but, as resulting from your inclination and associations and habits, they are all important. Cannot you resist the inclination to dissipate? Surely this is merely dissipation. When is your power of resistance to acquire sufficient strength? Will indulgence ever beget self-denial? When you set about the law, you must grapple with it as a man contending for life. You are absolutely unfitted for a dull, collecting, business lawyer. Well then; you must be a lawyer of the respectable class or none at all. This visit has a tendency to locate you among the bustling politicians, and to fix your character as far as any act, innocent in itself at twenty-four, can fix it. I do not say that, this visit over, you cannot be a lawyer, but that without a miracle you will not. This visit is a continuation of wrong-doing. It certainly is not a step in the way in which you must find honor and competence, if you ever find them. We sometimes in imagination contemplate Mr. Sullivan as leaving the bar — do you never ask yourself who fills the vacancy? Do you ever say, 'is it I?' Surely no — but I can tell who will. It will not be an Exeter man. I own I am at a loss to account for your want of perseverance in legal study. Do you not find pleasure in it? Depend upon it, it is the

pursuit you are engaged in, added, perhaps, to something of a natural want of energy of character, which, and which alone, prevents. I have seen with pleasure, that you could fix your attention and study for a week together, and rejoiced, though I could not approve of the objects of your pursuit. You have a good, an accurate, retentive memory, not a slow apprehension, at any rate a good, clear perception, capable of acquiring, and, though I do not think quite so well of your judgment, yet very capable of improving it. You are capable of making a good lawyer, perhaps a good politician. You are now, trust me, decently furnished in the one, and quite raw in the other. In all my experience, I have never known politics confer law knowledge or professional distinction, but have known law knowledge elevate the political man. The road to law is not through politics, but aside, apart from it. It takes away, but never gives. On the subject of politics, it is material to state, that they unfit the mind for science of any sort, certainly for the severe science of law, logic, or mathematics. As managed with us, they whet and brighten some of the faculties, invention, imagination, knowledge of men and things — the talent of diversifying, describing, abusing an adversary, &c., &c., but unfavorable to accuracy of thinking, talking, writing, speaking. In our state squabbles, a little knowledge, loose and general, is better than a great deal of sound and correct knowledge and information."

In the summer of 1824, William's prospects were sadly overshadowed through an act of momentary

passion, which filled him with grief, and his friends with mortification and sorrow. I cannot learn, from those who knew him best, that he was ever a man of licentious habits; but his impulses were strong, his powers of resistance weak; in an evil hour he yielded to temptation, and was forced to taste the bitter fruits of transgression. He was overpowered with shame and contrition. His father uttered no word of reproach, but received him as a child, and endeavored to inspire him with the hope of regaining what he had lost, by a life of fidelity and active virtue. He particularly hoped to bring him back to the neglected duties and studies of his profession. In a rude fragment which remains of a letter written at this time, he says: "My dear child, — for with all your faults you must be dear to me, — it is my duty to watch over you, and do all I can to conduct you in the path of virtue and honor. You cannot be indifferent to me. As a Christian, a father, and a man, I must condemn the act which has occasioned your present anxiety and trouble. But I see no baseness in it. It was the affair of passion and sudden temptation. It betrays neither meanness, malice, deliberate wickedness, nor dishonor. When you have repented of it, as I am sure you have, and have repaired the injury as an honorable man ought to do, and girded your mind with prudence and resolution to meet the consequences, and obviate their evils as far as possible, you will then be as you were, and it is in this state I would commune with you. . . . . I think that I feel at this moment a thousand times more anxiety for your character and success in life,

than I did at your age for my own. I wish indeed I had felt more in my own case than I did. My heart was in the main right, and my views honest and honorable, and I had a considerable portion of ambition to act well my part, and that that part should not be a mean one; and, though not then vain, I had sufficient confidence in myself, that, with unremitting industry and application, I could be a lawyer, and have rank among the best of them. But there never was a moment when I thought of success as possible without constant application. If I could now go back to twenty-five, the chief difference between the course I pursued and the one I wish you to adopt, would consist in the manner in which I would exercise my talents. I would be systematic, accurate, more attentive to my manners, aim at accuracy and some ornament in speaking, writing, and conversing. I would spend less time in some branches of learning, and have more for others. But to return from this digression, the first thing is to form an estimate of your powers of mind, your temper, particular disposition."

Here the sketch abruptly ends. I do not know whether it was ever written out in full, and forwarded to William.

The offence committed was one which the community are only too ready to overlook in a man. To William's friends and to himself it was the source of bitter anguish, — more especially to his sister, to whom he was tenderly attached, and who, with all a sister's pride, had rejoiced in her brother's accomplishments and success. His position in society was not permanently changed, and his father's apprehension

was, that the impression might pass by without the effect which it ought to have in turning his attention more entirely to his profession. It was in the fall of 1825, that I, then a boy in the academy, first became acquainted with William Smith. He was interested in the students, attended the meetings of their society, and took a part in their debates, where he contributed not a little to quicken their literary enthusiasm. His manners among us were exceedingly attractive, his advice always judicious, and his influence good. He felt for and encouraged those who were struggling with adverse circumstances. I remember one of our number, a destitute young man from the country, who was prostrated by a long and dangerous illness. William watched with him, saw that he had whatever might contribute to his comfort, and did not forget him when the delirium and weakness of disease were over. There was a gentleness in his motions, a softness in the tones of his voice, which, coming as they did from a kind heart, made his attentions particularly grateful in a sick room. He was of a generous, confiding nature, willing to give up what was for his own ease, and gaining the confidence of those younger than himself, by letting them freely into his own feelings and plans. And their confidence was not abused; for, however he may have fallen short of what he sought, he aimed at what was high, and made them the sharers of his hopes, not his partners in failure and defeat. I have never known a man whose conversation was more fastidiously pure, or who was more open to the finer and better impulses of humanity. But, like Burns

and a thousand others of the same temperament, he was weak, and therefore his life presented a series of magnificent aspirations and mortifying disappointments; — of plans entered upon with an enthusiasm which could not be sustained, and ending only in small and sad results.

This weakness his father held up to him with all the mournful consequences that must ensue. "It is the common error of young men to aspire to be distinguished, though they will not use the means; to be impatient to be everything at once. They hate the thorny road. Ignorance will do well enough for a boy from eighteen to twenty-five, rosy, healthy, animated, lively, all bagatelle; but it is most unbecoming in the middle of life, especially when the owner of it happens by mistake to get into office, as sometimes happens. It is dreadful in old age; it adds contempt to the feelings of the spectator. He is now poor indeed; all the revelry, gaiety, fun of life is gone, and ignorance and hard features, aches, pains only remain. In youth all within was spirit, all without gaiety. Now, all within and without is a dreary blank. Depend upon it, the world will take care to shun you. There is nothing in you they can desire, and nothing they will desire. You must depend on your resources, and having none, must mentally go to the poor-house."

For a time, Judge Smith seems to have hoped that the severe shock which his son had sustained, might be the means of working a revolution in his character. But habits of persevering industry are not easily formed, even by the strongest minds, after so many

years of mental dissipation and indulgence; and where there is weakness to begin with, the reformation, though not hopeless, is exceedingly difficult.

It would be wrong to infer, from what has been said, that William was an idler; his time was filled up with employment. The extent of his reading was immense; but usually without method, plan, or object, and therefore failing to impart wisdom or strength. He wrote with facility and with force, taking always on moral and political subjects the side which he believed most favorable to order, religion, virtue, and all the best interests of society. A fourth of July oration, an address before the Rockingham Agricultural Society, an essay on raising by law the means of supporting the ministry, remarks on the assassination of Julius Cæsar, with numerous newspaper articles, some of which were extensively copied through the United States, are among the writings which bear honorable testimony to his mind and heart. He began a history of Exeter, and made extensive and laborious researches among original documents. He was engaged on this his favorite work, when interrupted by sickness, and, till within a few weeks of his death, he cherished the hope of resuming and completing it.

William's most serious failing was an utter recklessness about money. It appears as if he had and could have no idea of its use or value. His expenses in college were unreasonably large. After he was admitted to the bar, though he received liberally from his father, he was constantly embarrassed with debt. Nor did he learn from experience; but the more he

suffered, the more prodigal were his habits. This touched his father in a tender point; for if there was anything on which he prided himself, it was a severe justice and promptness in all his pecuniary engagements. Nothing could be more annoying than the applications that were constantly coming to him for the payment of his son's debts. But as the difficulty went on increasing, he saw that the only way of stopping it was, to let him suffer the mortifying consequences of such conduct. He warned him of the course he should pursue, but without effect. William was soon harassed and beset with creditors. His situation preyed upon his spirits, haunted his dreams; yet he went on in the same thoughtless expenditures, suffering, repenting, but not reforming. As must always be the case with those who allow themselves to continue thus unfaithful to their pecuniary engagements, he was not only harassed and tormented, but, without intending it, guilty of injustice towards others. In one or two instances, he applied to his own use the money which he had received, as an attorney, for his client; and once he spent the money which he had received in trust as a guardian. The sums were small, and, of course, he expected and intended to replace them in season; but he had not the power. Some hint of these difficulties came to his father, and it was the most cutting thing that he had been called to endure. For a man with his ideas of professional honor to see not only the honest tradesman deprived of his due, but the orphan kept, even for a few weeks, out of her inheritance by the guardian whom she had chosen to protect her, and that guardian a son of

his, was more than even his philosophy could bear with patience. In a letter to his daughter he says, "Oh that W. had any — the smallest firmness of mind; that he could do and forbear according to the dictates of his judgment. I am sure I do not have credit for the tithe of that delicacy and tenderness I really possess. When I saw Mr. Dow, Monday evening, alone, I could not find it in my heart, for fear of the answer, to ask him if W.'s saying to his wards about the loan of their money to him, were true. And he could, young, do what I, hackneyed and hardened in the ways of the world, could not even talk about. Why should there be any doubt? It is not much worse to defraud a ward, a tender, confiding ward, than a client, of his money — the word defraud is a hard one, let it be 'work them out of it.'

"I fear I shall not, unless for special cause, be able to see you this week, or till Sunday. Though I do not pray publicly as I ought, yet in heart I sincerely pray that you may be enabled to do all your duty on this occasion, though much at my expense. I cannot but hope, (perhaps the word is a little too strong,) that with the return of bodily strength, W. may acquire new vigor of resolution, new mental firmness. Without some such hope the heart would break. It gives me some relief to commune thus with you. God bless you, my dear child and friend."

I find detached and broken sentences, written on scraps of paper, sometimes in the midst of other things, intended probably for no one to see, which show how keenly he suffered. "To be a father, for all purposes of pain, anxiety, providing, disgrace, &c.

but not for filial care, soothing, honor, comfort." "To avoid acts of folly and imprudence, it is necessary to taste the punishment that follows them." "What a pity the boy could not foresee this to save the man! A little diligence then would have ensured success." "Not strong passions, but remarkably weak powers of resistance — no rudder — light wind carries him whithersoever it will." "Something or nothing — must be total, radical change — present course ends in 0." "You may, if you please, sneak through life very much like nine-tenths of your fellow-men, and the scorn of the remaining one tenth, the world certainly none the better for you, and you none the better for existence. What if one cabbage-plant the less?" "Here lies a man who lived in vain, the world none the better for him, he the worse for the world." "If our young men are ruined because born to expectations, the error is full of disgrace to them." "You will not study the law, therefore can never be a lawyer. You will not pretend to have studied political economy, the science of politics, government, legislation, finance, taxation, revenue, the financial system of the United States."

"'I grieve to say his conduct has been such as not to be justified even by his father.' And will a father be easier satisfied than a stranger? Harder to justify to a father, says J. S." Those who have read the preceding pages will not question the truth of this, and it should lead us to receive, not without some abatement, the estimate he has given us of his son. For he compared him, not with other young men, nor with what is usually attained, but with the

high standard which he had set up for him, and which he knew that his talents rightly employed would enable him to reach. He did not make the allowance that should be always made, and which no one was more ready to make in other cases than he, for youthful inexperience and indiscretion, and has therefore sometimes applied to acts arising from thoughtlessness, epithets which should be applied only to wilful and deliberate dishonesty.

But however severely he may have been tried at times, the general cheerfulness of Judge Smith's temper was unbroken, and his sources of enjoyment rich and various. In the summer of 1825, he went with his daughter to Niagara, Montreal, and Quebec. She had never journeyed before, and her father had never, I believe, been west of Albany. Everything was new to them, and they went on exploring and enjoying, with an almost childish zest and freshness of interest. The light of their own joyous spirits was thrown over whatever they met, and the smallest incidents not only amused them at the time, but were hoarded up to enliven their more solitary hours. For instance, "I ought," says Judge Smith, in his journal,[1] "to have mentioned a civility we experienced at Auburn, which gratified us at the time, and ever since in the recollection. I directed the coachman to stop on a rising ground, just above the village, that we might have a full view of it and the prison. It was just opposite the seat of a gentleman. A.'s

[1] This, and other facts relating to the journey, are extracted from a journal written out by Judge Smith, mostly after his return home, from letters and his own recollections.

eyes were soon attracted to his beautiful garden, and she exclaimed, 'see the beautiful cherries.' The gentleman, who was walking in his garden unseen by us, called our coachman to him. He soon returned with three or four branches loaded with the finest cherries. We bowed our acknowledgments and went on our way, eating and rejoicing. How many similar acts of attention we and our good countrymen omit, from a foolish *mauvaise honte*. We determined thenceforth to stop every passenger, and give him cherries in the season of them."

Judge Smith had a great taste for geography, and especially for tracing out the exact localities which had been distinguished for any remarkable actions or events. Perhaps no spot awakened so many or such various emotions as the battle-ground, which he had not visited since he was there as a boy, bearing arms in the service of his country. He says: "We stopped to dine at Saratoga, the very spot where Burgoyne surrendered to Gates. This circumstance added something to the enjoyment of a good dinner. In the afternoon we passed, at the foot of Bemis's heights, the battle-grounds of the 19th of September and 7th of October. At Stillwater, lower down, I began to recognize the ground I had been over when a boy, forty-eight years ago, and I cannot describe the sensations. Whatever of good or evil fortune I had experienced in the intervening years, was present to my imagination. I will not say that the retrospection was all delightful; but I can truly say the pleasant greatly predominated."

Twelve or fifteen years before, Judge Smith had

been delighted with Bishop Cheverus, when he heard him preach to his little flock in a small church in Maine, and on meeting him afterwards, was pleased with him even more in his private than in his public ministration. But he was not so favorably impressed with the Roman Catholic ceremonies at Montreal. "We were," he says, "particularly in luck, in being in at the death of one of the oldest of the clergy, as it gave us an opportunity of witnessing the ceremony, (I should say ceremonies, for they were many,) of a Catholic funeral. It was in the cathedral, and took up two or three hours. Our Protestant eyes and ears were satisfied long before the close, but the crowd did not allow us to retire, till his late reverence was laid quietly in his grave, in a corner of the church. The nuns attended, and the place round the altar was filled with priests. The prayers and service, being in Latin, seemed prodigiously to heighten the devotion of the Canadians near us. The heat of the room was considerably augmented, by a great number of wax candles set to burning in honor of the day. A few devout ladies near us were so fortunate as to obtain each one, at least a yard in height. We had no claims to any such distinction, and were obliged to atone for the privation, by stirring our fans briskly. . . . The Catholics, no doubt, are equally sincere with us Protestants. In the arts of devotion they seem to excel us. 'God was praised by the best organ and choristers.' Lace, brocade, and embroidery constituted the robes of the priests. The choicest incense from Arabia caused a sweet-smelling savor, and there were abundance of candles

to enlighten. I fear we must allow that our devotion is less fervent than theirs. Is reason an enemy to devotion, or merely to the semblance of it? We of the sect of rational Christians, are charged by our orthodox brethren with wanting piety. I hope the difference, if there be any, is only in appearance. Why should reason, in its largest measure, be unfavorable to true piety? It does not become us to say which, the rational, or the ignorant enthusiast, renders the most acceptable homage to the God of reason, but sure I am no man could sit three hours, as I have done, in the Catholic church of Montreal, where everything was addressed to the bodily eyes and ears, and go away without the most sincere contempt for the solemn mummery. I am certainly no enemy to a liberal support to the teachers of religion who are calculated to do so much good in society, but here the clergy abound in wealth; it is the flock who are poor."

The Catholic was not the only kind of religious service that failed to edify the travellers. "At Saratoga we attended divine worship, and heard * * * * preach himself above an hour, much to his own satisfaction."

But the interesting people they met during their journey, were what contributed most to their enjoyment, and in this respect they were particularly fortunate. "On leaving Boston," Judge Smith says, "we had a very pleasant ride, though it rained occasionally. The pleasure arose from meeting in the stage * * * * * and * * * * * the former espe-

cially, a charming young married man,[1] has travelled, is literary, communicative, and well-bred." At Northampton, he "was (not unexpectedly) delighted with Judge Howe." On going from Northampton, they "had an accession to their company, of a young gentleman by the name of Snelling.[2] He proved a useful travelling companion, possessed a good share of information, and certainly had no disposition to hoard. I believe he was particularly pleased with us, which did not serve to lessen him in our estimation."

"We reached Caldwell, at the south end of the lake (George), before sunset, and found an excellent house, Mr. Baird's. A. with several of the company took advantage of a fine evening, to visit the ruins of Fort William Henry, &c. I remained with the landlord, who was as much to my taste as Squire Weston's landlord at the Hercules Pillars, who had all the news of the town, and could tell how affairs went, knowing a great deal, since the horses of many of the quality stood at his house. He asked me, 'if I knew Mr. Emmett, the great lawyer of New York?' I answered I had never seen him, but intended to obtain an introduction when I reached the city. He replied, 'you have seen and supped with him this evening. Mr. E. is on his way, with

[1] The accomplished author of "the Conquest of Mexico." Miss Smith, in a letter to her mother, says, "Father and Mr. P. kept up a constant interchange of wit and humor. It was the most entertaining ride we ever took."

[2] Author of "Tales of the North-West," a young man whose brilliant promise contrasted painfully with his after-life.

his wife, to visit a daughter near Ogdensburg.' I told him 'he must be mistaken; that I was sure, if there had been any great lawyer and orator at the table, and especially if an Irishman, I should have taken some note of him.' In a few minutes an elderly gentleman, in a pretty ordinary travelling dress and with nothing striking in his appearance, and whom I recollected having seen at the table, took his chair in the piazza, to enjoy the delightful evening near us. Mr. B. gave me a look as much as to say, 'this is the man.' I immediately began a conversation with him, and was soon satisfied that dress 'does not make the man, and want of it the fellow.' I took care to lead him to topics I knew would excite him. His countenance lighted up, and he was quite lively and eloquent. In about half an hour he retired to give some orders. On his return, I told him I wished to introduce a person to his acquaintance, of whom he had never heard, and never would again. On announcing my name, he immediately and cordially took me by the hand, pretended he had heard of me, and wished to know me. He spoke of General Haines, and young Mr. Walker, one or both had studied with him. I made the proper acknowledgments, and we fell into the pleasantest conversation imaginable about men and things, the Irish and New York bars, South Carolina, United States, &c. I was sorry that our arrangements deprived me of his company. The next day he was to remain at Baird's, and we to start for Albany. Judge Spencer related to me the anecdote of Mr. Pinckney's attack on him, in the supreme court of the

United States. They were on opposite sides in an important cause, and one which Pinckney had much at heart, and was desirous of winning by fair or unfair means. In the course of his argument, he travelled out of the cause to make observations, personal and extremely offensive on Mr. E. with a view, probably, of irritating and weakening his reply. Mr. E. sat quiet and endured it all. It seemed to have sharpened his intellect, without having irritated his temper. When the argument was through, he said, 'perhaps he ought to notice the remarks of the opposite counsel, but this was a species of warfare in which he had the good fortune to have little experience, and one in which he never dealt. He was willing his learned opponent should have all the advantage he promised himself from the display of his talents in this way. When he came to this country he was a stranger, and was happy to say that from the bar generally and the court universally, he experienced nothing but politeness, and even kindness. He believed the court would do him the justice to say, he had said or done nothing in this cause, to merit a different treatment. He had always been accustomed to admire, and even reverence the learning and eloquence of Mr. Pinckney, and he was the last man from whom he should have expected personal observations of the sort the court had just witnessed. He had been in early life taught by the highest authority, not to return railing for railing. He would only say, that he had been informed that the learned gentleman had filled the highest office his country could bestow at the court of St. James.

He was very sure he had not learned his breeding in that school.'[1] The court, bar, and audience were delighted. Mr. Pinckney was apt to be occasionally a little overbearing."

On their way home in the steam-boat from New York to New Haven, Judge Smith was so fortunate as to find Mr. Hoffman, of Baltimore. "Here again the introduction was out of the common way. A., in passing the baggage-room, saw the name on a trunk, and informed me of the circumstance. We immediately set about examining the persons, countenances, &c. of the passengers, and happened to fix on the right man. When shortly after, he took a seat near me on the deck, I observed that, having reason to believe Mr. Hoffman of Baltimore was on board, I had fixed on him as the man. He bowed assent, and said it would gratify him to know who it was that did him the honor to notice his person. This seemed too reasonable to be denied. We soon became acquainted, and spent the greater part of the time in conversation together. He is remarkably

[1] Mr. Pinckney afterwards made the most ample and generous acknowledgment. "The manner," he said, "in which he (Mr. Emmett) replied, reproaches me by its forbearance and urbanity, and could not fail to hasten the repentance, which reflection alone would have produced, and which I am glad to have so public an occasion of avowing. I offer him a gratuitous and cheerful atonement — cheerful, because it puts me to rights with myself, and because it is tendered not to ignorance and presumption, but to the highest worth in intellect and morals, enhanced by such eloquence as few may hope to equal — to an interesting stranger, whom adversity has tried, and affliction struck severely to the heart — to an exile, whom any country might be proud to receive, and every man of a generous temper would be ashamed to offend." — *Wheaton's Life of Pinckney*, p. 500.

well-informed, and even learned for a young man. He made me better acquainted with Pinckney than I was before. He knew Harper well. We had enough to talk about in the Maryland bar, the supreme court of the United States, and the most modern books of law. He had read Dane's Digest, and gives a very bad account of it. He thinks it faulty in arrangement, in matter, language and manner." [1]

But nothing that occurred during the journey gave Judge Smith so much pleasure at the time, or so much satisfaction afterwards, as the acquaintance he formed with Chancellor Kent, for whom, as a lawyer and a man, he had entertained the most profound respect. Their meeting was on this wise, as described in Judge Smith's journal. "We reached Schenectady about seven, there to take the canal-boat. When we took our seats at the supper-table, we found on the opposite side, a gentleman and two very young ladies. His person indicated more years, but his manners put him on a par with the ladies. A gentleman on the same side with us, accosted him as Mr. Kent; surely it was not the great Chancellor Kent; he was not old, but too old for that gentleman's son. It might be a brother, at any rate, he was a frisky chap, much sail and little ballast. The gentleman and his ladies left the table, as we did, soon after, and A. whispered me 'that was Chancellor Kent, you may be sure.' I stoutly denied it, and should never have been convinced, had not the same figure, with his two ladies, popped again upon us in

[1] In this opinion Judge Smith entirely concurred.

the entry, and A. introduced me as Judge Smith. He seemed almost as incredulous on the score of my personal identity as I was of his, (not I presume from the same cause.) We both yielded at last, and he introduced his daughter and his niece. With one consent we all began to lament that our engagements must instantly separate us, though both bound to the same place, Utica.

"We reached Utica about sunset, had our baggage sent to Shepherd's inn, a very good one, and had no sooner sat down than we were called on by Chancellor Kent and Judge Platt. We had proposed spending the next day at Utica, and Judge Platt urged us to spend it at his house with the chancellor and his family. This was too much in unison with our wishes to be declined. . . . . We dined at four o'clock, and spent our time very agreeably. The Kents and we at nine went on board the canal-boat, and the next night at midnight, parted at Weed's Bason, they proceeding direct for Buffalo, and we for Oswego. Nothing but the absolute necessity of visiting our relations on the Susquehanna could have separated us; we were all acquainted at once, and I am sure strongly attached on all sides. The ladies preferred quitting the boat with us, and taking a carriage for Auburn. Here we saw the chancellor in his true character of simplicity and the most kindly affections; his judgment led him one way, and their inclination another. His desire to oblige them held him long in suspense. It was clear we must part soon, and I could not but join him in the argument. The ladies at last acquiesced, and we parted to meet no more till our arrival at New York."

[At New York, several weeks afterwards:] "I called on the chancellor, and spent the forenoon with him in his library. He did the talking of course, and I played the game of listening. Some of my friends, to whom I have mentioned it, have not hesitated to say that I played badly for want of practice.[1] The ladies insisted that Ariana should make her home with them, which was quite agreeable to her. I gave them much the greater part of my company, and never spent two days more pleasantly or profitably."

"July 28, we took the stage for Exeter, and were so happy as to find our friends very well, and not expecting us. It was one day sooner than the time we had prescribed for ourselves at setting out, eight weeks. We were happy to find ourselves once more at home, and did not a little applaud our resolution in having ventured on so long a journey, now successfully brought to a close, a thing that will give us pleasure as long as we live. We had travelled twenty-three or twenty-four hundred miles, and had seen all the most interesting places on our route, embracing the northern section of the United States and the adjoining country. We set out with the determination of being pleased, and were of course not disappointed. It is no doubt true that those who set out on their travels with the determination to find fault, may safely count on success. We were uni-

[1] Judge Smith, many years before, spending the night in company with Chief Justice Parsons and other lawyers, at a public house, was late in making his appearance in the morning, and inquiry being made what could have become of him, "Oh," said Judge Parsons, "he is in bed resting that —— tongue of his."

formly treated with politeness, and in many cases experienced the most delicate and friendly attentions. We made no claims, set up no pretensions, and I believe uniformly experienced an increase of attentions in the various companies into which we were thrown, as the time of our sojourning together drew to a close; so that modesty as well as honesty is the best policy in a traveller, and I would heartily recommend it to all my friends on their travels. I incline to think the general practice is the other way, and that modest, unpretending people at home frequently set up claims and make extravagant demands abroad, as tending to beget an idea of their great consequence.

"We were by no means sparing of ourselves when anything was to be done or seen. At the same time we were never in a hurry, made no point of being at a particular place at any particular time, or of travelling in one mode rather than another. We used steam-boats, canal-boats, stages, and hired private carriages, as was most expedient at the time. When the labors of one day fatigued us, we took care to rest the next. I experienced no inconvenience from the indulgence of my natural disposition to enter freely into conversation with all persons and on all subjects. Amusement, and, what is more important, information and increase of knowledge, is to be derived from the conversation of every individual whatever, with whom one may be thrown into a natural train of communication. For ourselves, we can say, that we never found ourselves in company with the stupidest of all possible companions in a stage-coach, without finding that, in the course of our conversation with him, we had some ideas suggested to

us, either grave or gay, or some information communicated in the course of our journey, which we should have regretted not to have learned, and which we should be sorry to have immediately forgotten.

"It was not uncommon to find in these casual conversations, that there was some person, sometimes many, with whom we were both acquainted. This created something of a tie, and prevented us from feeling towards each other as perfect strangers. It was our uniform practice to sit down at every meal at the ordinary. We saw all the company. In this way we made many agreeable acquaintances, useful to us on our journey. And I would recommend to travellers to go in very small parties, and to associate as little as possible with each other. These large parties are the dullest things imaginable. I can even imagine —— —— and —— ——, with their sprightly wives and —— ——, at the end of three days' travelling together in the same carriage, and keeping by themselves at the public houses, — dull enough, in all conscience, to satisfy the bitterest enemy of gaiety and bagatelle.

"I cannot conclude this conclusion to our excursion, without dissuading invalids from undertaking so long a journey. They are in much greater danger of losing the little health they may happen to have, than of acquiring any fresh stock. Variety of company, novel and striking scenery, the picturesque, the sublime, or the beautiful, will add nothing to the enjoyment or pleasure of the real invalid. This kind of misery, that of ill health, languor and pain, does not love company, and company does not love it."

The two years after this journey were marked in

Judge Smith's family by no important events, but were years of quiet, domestic enjoyment. Mrs. Smith's health, which had been slowly declining for a long time, was now such that she seldom left the house, except during the mildest of the summer weather, to observe in their progress the little improvements in gardening, which had furnished so many hours of refined and pleasant occupation. She was in that delicate condition, which leaves one's friends never entirely free from solicitude, and which often does so much to soften the family intercourse, and to cherish a tender, watchful, confiding affection. No daughter could be more devoted than Ariana during this time to her mother. She was almost always at home, to free her from every care, and to do whatever could be done to alleviate her sufferings, which were mostly those that spring from weakness, and, above all, to soothe and cheer her mind. These attentions were not undervalued, but the affections of the wife and mother increased as she drew near her end. In the last letter she wrote, which was to her husband and daughter while they were on their tour to Niagara, she says, "I wish you could see your garden this evening — it is delightful; but I cannot help feeling that the divinities of the place are away, far, too far for comfort. Oh! my dear husband, do not let me see in your letters that you do not enjoy yourselves, for never did any one make such sacrifice as I have done. It seems to me I should like even to hear you talk to the cats in your loudest tones." And there was something very beautiful and touching in William's attentions to her, who, in all his difficulties

and errors, had never, for a moment, permitted the tenderness of the mother to be lost in the severity of the judge or teacher. She continued slowly failing till the morning of the 19th of June, 1827, when she quietly fell asleep. The progress of disease had been so constant, her withdrawal from life so gradual, and so long looked for, and death was so plainly a welcome guest, that it came gently as a summer's cloud, and her friends could hardly mourn their loss without impiety to her.

The autumn after her death, William, who, till then, had lived under his father's roof, removed to Portsmouth, and opened an office there. The next spring he was attacked by a violent lung fever, which, after continuing some weeks, left him with a heavy cough, exhausting night sweats, and some of the surest indications of consumption. As soon as he was able to bear the journey he was taken home, where his sister, who had been with him during the fever, continued still to perform the duties of a most faithful, tender, and devoted nurse.

Just at this time the Exeter bank, of which Judge Smith had been the president from its commencement, was broken open, and nearly thirty thousand dollars stolen from it. Here was a new field of action, and, in the capacity of thief-catcher, he was absent from home several weeks. He never, perhaps, displayed more adroitness than in this expedition. The robbers were cunning and experienced men, shrewd and reckless, with no fear of the state-prison, but perfectly willing to spend a few years there, if, at the expiration of the term, they could be

left in possession of their buried treasures. They had all been convicts before, and their leader, Malbone Briggs, though, in the eye of the law, only an accessary in the case, had been three times in the state-prison, and of his seven sons, six were said to have been graduated at the same school. Judge Smith had no great difficulty in getting such evidence, as to satisfy himself that they would be convicted, but how to get back the money was the hard question. For this purpose he went several times to New York, visited Briggs's house during his absence, where he had several confidential interviews with Mrs. B., who seemed not unwilling to be freed for a short time from the severe dominion of her master. He had frequent conversations with the prisoners, and at last, making no other promise than that their confessions should not be used in evidence against them, he succeeded in getting their secret, and securing to the bank nearly all that had been lost.

A few extracts from letters written to his daughter, during this expedition, are introduced here, principally for the purpose of showing how fondly his mind turned always towards her. Indeed, he said that he found himself constantly using expressions, which he had used thirty years before in corresponding with her mother. "My dear Ariana: your letter of Sunday evening was very, very good and kind, and cheered me mightily. I am glad such sentiments are in you, and that they came out. God bless you. . . . . I am glad this will reach you Saturday. It will come fresh from your best friend, and you will readily imagine, better than he can ex-

press, the love he bears you, and always has and ever will." July 5. In New York. "I shall see your friends, the Smiths and Kents, I hope; but a man pursuing thieves feels so like a catchpole, that he has little pleasure in seeing friends or joining in amusements. But I shall *tak' a luke o' them.* I hope you have Mr. Brown with you, and that your time will pass not unpleasantly. Young people should do all the travelling. I have less and less enjoyment in it every day, and experience a loneliness I never felt before. The world and I form two great divisions, more unequal in number than your friend's two classes — saints and sinners."

July 28. "How good and happy a thing it is that I have no anxiety about affairs at home. When anything very pleasant occurs here I wish for you, but the general balance is the other way; the suffering exceeds the pleasure, and therefore I am glad you are safe, and I hope happy, superintending the affairs of your small family. I am in a crowd all the time, and long for your shady, cool walks, books and airy rooms. . . . Nothing can be more gloomy and solitary than my life here. . . . Business is certainly unsocial, and New York a desert to a New Hampshire man, trying to lay his hands on Exeter bank bills. Surely our Exeter people are the stupidest of the stupid. . . . But all this only proves my temper is a little ruffled; but I shall soon recover, and be in charity with all men. It rains every day here. . . . Adieu, my dearest Ariana. Be happy; you must be so, for you are good, and not in pursuit of thieves and Exeter bank bills. So prays J. S."

Through the autumn of 1828, William was very feeble, never leaving the house, and spending the greater part of his time in his chamber. Ariana's attention was divided between her father and brother, the day being usually passed in the sick room, and the evening in her father's study. A newly married couple could hardly be more assiduous in their attentions to each other, or take more delight in each other's society. Works of fiction, history and philosophy, contributed each a share to their instruction and enjoyment. Reading afforded matter for conversation, and conversation gave new life and zest to reading. Sometimes, though rarely, a game of piquet was allowed to take the place of books, and mimic kings, queens and knaves usurped the stations and played the parts of their more important prototypes, who fill the pages of history and romance. The memory of the friend who had so recently gone from among them was gratefully cherished, and threw a softening influence over their lives. No subject was so frequently or so warmly dwelt upon in their evening intercourse as the devotedness of her former days, and the patience and resignation of her last hours. It seemed almost as if she were still one of the company.

In this manner the autumn passed. There was little hope of William's recovery, but nothing was omitted by his father or sister that might contribute either to his present comfort or future amendment. Late in the fall Ariana was seized with a violent cold. No serious consequences were apprehended, and it was allowed to pass like other colds. Her usual du-

ties and pleasures were not interrupted, and her mind lost nothing of its natural quickness and vivacity. The whole winter passed away, and still there was no improvement. The true character of the disease was not suspected. But her father was not alarmed. His affections were so concentrated on her, whom he had already looked forward to as the last that should remain to him of his five children, that it did not occur to him that she also might be taken. He quieted his own apprehensions, but not the disease, which was making slow but fatal inroads on her constitution, closing the avenues and exhausting the fountains of life. Early in March, as the spring birds first began to appear, she withdrew to her chamber, and soon a few moments in the day were all that she had strength to spend, except upon her bed. The feelings with which she was borne along through her sickness, are happily expressed in words which I find copied by her own hand. "It has often been said that a slow, wasting disease of the body, must press heavily upon the soul, which sees its departure from the friendly world approach step by step, and counts as it were the leaves of bloom which drop one after another. When, however, no distorting pains interfere, and when the departing one does not love too much that which is called life, nor hate too much that which is called death, it may not be so bad as is imagined. If we drink the last flask of a noble wine with a pleasure which we did not know before, why not also these last drops of the earthly being? In thus gliding quietly downwards, we meet with few of the cares and shocks of this lower world; we have little more

to do than to pluck its flowers; a foretaste of the disembodied state is breathing around us; those who love us have more thought and more affection for the departing one; and those who do not love us we more lightly and easily pardon, regardful of the text, 'Forgive as we would be forgiven,' as well as mindful of the short time which we have to pilgrimage together; and when a tear flows from the eye, it flows almost as visibly as seed pearl into the life of paradise. Whoever has experienced such gentle suffering will not deny us his assent. . . . ."

When the warm weather came, there appeared no improvement or relief, but rather a sinking and wasting away. Like some young and beautiful plant, that droops we know not why, her strength, without any adequate cause that her physicians could discover, gradually left her, till at length it was found that the same disease which had taken the mother, and was now taking the brother to his grave, had seized also on her. No suspicion of the nature of her illness was entertained by her friends till three or four weeks before her death. She knew that she must die, but expressed no wish to live except for her father's sake. There were no professions or parting words, but just enough to let him know that she understood her situation, and was prepared to go in peace.

"It is," said her father, in minutes taken at the time, "exceedingly painful to look on a beloved object, of whose life you entirely despair. The occasional pleasant looks, and smiles, and lively conversation cause a most melancholy emotion. In this

case I am persuaded that the dear sufferer has no hopes at such moments more than the beholder. The emotion is a mixed one; you rejoice and grieve — hope for an instant springs up — your judgment is employed in repressing it. You are reminded powerfully of the value of what you are just about to lose forever. You rejoice at the apparent ease, comfort and exemption from suffering, but feel that your joy is fated, to last but for a moment, and speedily to be succeeded by suffering and death."

She once said to her father, "How many times have I formed schemes of the future, when I was to take care of you, nurse you, amuse you! How many thousand little comforts I have planned for you!" But conversations like this were too interesting for her. Judge Smith never felt at ease in the sick room, even of his daughter. His life had been spent amid other scenes. His feelings were kind; but he had not the soft and pliant manners, the calm self-possession and repose which are so important to the sick. She was unwilling also that he should witness her sufferings. William, whose health had been slowly improving, was a more gentle and unexciting companion, and was more with her. She sank quietly away, and when she slept, her countenance seemed like that of a delicate young girl in some pleasant dream. In her wanderings, there was, as her father said, no expression of fear or dread, no indication of anything disagreeable, but all was peaceful and serene. On Monday, the 15th of June, she dictated a few words for her brother to write down, that they might go with some small tokens of her love

to her dearest friends. On Friday, the 19th of June, the anniversary of her mother's death, just at sunset, she asked to be carried to the window, and looking out as she knew for the last time on the earth and sky, she was touched and melted by their exceeding beauty. "Such softness of coloring," she said, "such intermingling of shades, such a variety of green!" But her eyes were soon to open on richer glories than God has made to shine from these his lower works. The next day, at the same hour, it being towards the close of the last day of the week, she was called away to spend an eternal Sabbath in a world where pain and sickness shall be felt no more.

It had been one of those lovely, transparent June days, when the earth seems in a peculiar manner embraced by the fostering heavens. The air was filled with fragrance, and the sun just going down, as the physician informed Judge Smith that his daughter was dying. He arose, calmly begged the clergyman of a neighboring town, with whom he was conversing, to excuse him, and went to her chamber. No word was spoken, and the beautiful composure with which she died, her spirit passing away gently as the perfume of evening flowers, threw around her departure a charm, which took from death all its terrors.

For a moment, as he afterwards said, though no one perceived it at the time, her father rebelled against the Providence of God — it was but for a moment. He talked of her freely, calmly and cheerfully. A stranger would not have known from his appearance, that anything unusual had taken place.

Indeed, to some who did not understand his character, this self-possession seemed so unnatural, that they feared his mind was giving way, while by others it was attributed to a Stoic insensibility. But he had meat to eat, which they knew not of. He asked the clergyman who attended her funeral to "give thanks that she had been spared so long," and as he followed her body to the grave, supporting the son on whom he should have leaned, he was enabled to look up, and view as but a point the days or years which might separate him from her. Indeed it was hardly a separation. "I have known," he said, "what implicit confidence is — what it is to love another better than myself — to see my own good qualities, if I may speak of such things, exist in another, in a more amiable, graceful, attractive form. In truth, dwelling on and contemplating her perfect character, constitutes my whole pleasure. She must be happy hereafter, who has been so good here, and she will live with me as long as I live."

During her sickness, the thought of her suffering tried him severely. "It is painful," he said, "exceedingly so, to watch the progress of phthisis in a beloved object to the final close. How gradual! every step marked with additional weakness and pain. If the patient has hope of a favorable termination, the rational beholders can have none. We (the beholders) can endure the pain, (so to speak,) when we foresee, or think we foresee, a favorable issue; but without that, it seems to us death and something more, an unnecessary infliction, like tormenting a condemned person, and then executing

him. But the Christian believes this Judge does not willingly inflict pain. There is some end to be answered by it, though he knows not what it is. His faith and trust in the divine goodness alone can check the rising murmurs. But even these cannot ease his pain, a father's pain at such a sight."

But soon these painful impressions passed away, and his thoughts of her, if sometimes accompanied with a feeling of loneliness, were all pleasant. The entries in his common-place book, sometimes quoted and sometimes original, are an index to his state of mind.

"'It were a dull house ours, were we to lose Anne.' "Alas! Monday, 7th September, 1829."

"A. E. S. 'The memory of love is to me far more than a living love is to others — there is no passion so full of tender, of soft, of hallowing associations, as the love which is stamped by death. To lose this would be dreadful.' October 12, 1829."

In a letter to his niece,[1] Mrs. Walker, Judge Smith said: "I thank you for naming your daughter for my beloved one, now no more. I know well that the number is very small who knew the dear departed as I knew her. Except yourself and a very few others, none could know how very dear she was

[1] Sarah, wife of James Walker, of Peterborough, and daughter of Judge Smith's brother James, a woman greatly beloved by all who knew her. She had assisted in taking care of Ariana, during the latter part of her illness, and was with her when she died. There was no one out of his immediate family to whom Judge Smith was more tenderly attached. She and her uncle died of the same disease, and within a few weeks of each other.

to me, and how large a measure of my happiness depended on her, after the death of her mother. It is the recollections of her, (what she was,) that now cheer me on my journey, and I hope and believe they will continue to do so to the end. So far from murmuring at my irreparable loss, for such it truly was, I am grateful to the Giver of every good and perfect gift, that she was lent me so long. I most heartily join with you in the wish, that your's may prove as great a blessing to her parents, and that she may survive you both — a greater good I cannot conceive of — may it be yours."

Years after, when his domestic circumstances had entirely changed, he carried with him the same tender remembrance of his daughter. In 1836, he says, quoting partly from "The Doctor," a book in which he greatly delighted: "Grief had acted upon her heart like the rod of Moses upon the rock in the desert — it had opened it, and the well-spring of piety gushed out. When the agony of bereavement had passed away, the intensity of J. S.'s affection became a source of consolation. A. E. S. became a purely ideal object, more, not less dear to his heart."

> 'The idea of her life shall sweetly creep
> Into his study of imagination,
> And every lovely organ of her life
> Shall come apparelled in more precious habit,
> More moving, delicate, and full of life,
> Into the eye and prospect of the soul,
> Than when she lived indeed.' — *Shakspeare.*

It may be that the sketch which I have given of Miss Smith is too highly colored, and that her true

image has become, in a measure, transfigured in the mind of one who knew her only when a boy; whose acquaintance with her began, on her part, with kind actions, and ended in kinder wishes; with whom the impress of her mind and person has gone as a bright reality, and whom her death first taught how serene and beautiful a thing it may be to die.

A plain marble head-stone marks her grave. The inscription upon it was prepared by her father; the Latin being slightly altered from Bishop Lowth's exquisitely written epitaph upon his daughter:

Ariana Elizabeth,
daughter of
Jeremiah and Elizabeth
Smith.
Born 28th December, 1797.
Died 20th June, 1829.

Cara, vale! Ingenio præstans, pietate, pudore,
Et plusquam natæ nomine cara, vale!
Ariana, vale! At veniet felicius ævum
Quando iterum tecum, sim modo dignus, ero.

This world was not the world
for thee.

CHAPTER XII.

1829 — 1830.

WILLIAM SMITH — HIS SICKNESS — GOES TO MISSISSIPPI — HIS DEATH.

During the summer after his daughter's death, Judge Smith's time, and his thoughts, so far as they could be spared from the dead, were occupied with his son. He took several journeys with him, — among them, one to the White Hills — consulting the ablest physicians, and, under their advice, making the most of the favorable season of the year. In September, William left home, to try the effect of a milder climate. He went first to Washington, thence, by a private conveyance, across to Wheeling, and down the Ohio to Cincinnati, where he spent a month or more with his cousin, Jesse Smith, a man distinguished as a physician, and who a few years after fell a victim to his professional zeal and fidelity, during the prevalence of the cholera. From Cincinnati he went down the Ohio and Mississippi, to the plantation of another cousin, Robert Smith,[1] in whose

[1] The son of Judge Smith's brother Robert, who died in 1795.

family he spent the winter, receiving every kindness and attention that might serve to cheer his mind, or alleviate his bodily sufferings. It was a sore trial for him to be obliged to leave home under such circumstances. Writing from New York, September 27, he said: "I can assure you, my dear father, that I felt more sad when I left you, than I ever did before. My ride to P. was one of mournful recollections. If the objects of my travel are accomplished, we may yet be very happy together. But whatever the event may be, be assured that I do hold myself firmly bound unto you, to leave nothing undone which will have a tendency to improve my health and my character. If I return to you in better health, I am determined that you shall find me improved in mind." Philadelphia, October 4. "How I wish that I was to spend the winter with you. How sad I feel in places where I once should have felt so gay. I think a thousand times a day of my dear mother and sister, and as often of you."

His journey over the mountains to Wheeling, was exceedingly exhausting, and must have left him much worse than it found him. But at Washington, and elsewhere, he took great interest in political affairs, and in whatever was characteristic of the people and the country through which he passed. His passage down the Ohio was slow, and, amid a crowd of travellers, he was sad and solitary. But at Louisville an old friend and townsman, Nicholas Gilman, at some personal inconvenience, joined him, and travelled several days in the same boat. William, in a letter to his father, acknowledged his obligations to

this "most kind and affectionate nurse," and Mr. Gilman said of him, "I have never met with a sick person so uncomplaining. He was all gratitude for my attentions, and it afforded me great happiness to be of any relief to him, so far from home — so sick — playmates from childhood up. Our talk of home, of by-gone days, made me feel and act towards him, &c."

William's letters to his father are full of a tender, affectionate, and melancholy interest, recurring often to their lost friends, and to those whom he had left behind. January 11, 1830, he said: "I have been reading Middleton's life of Cicero, for the third time, and was struck with the resemblance between your affliction and that of C. 'Tullia was about two-and-thirty years old, at the time of her death, and, by the few hints which are left of her character, appears to have been an excellent and admirable woman; she was most affectionately and piously observant of her father; and, to the usual graces of her sex having added the more solid accomplishments of knowledge and polite letters, was qualified to be the companion as well as delight of his age.' It is not strange that Middleton adds, as the greatest calamity which could befall him, the 'loss of such a daughter, in the prime of her life, in the most comfortless season of his own.' He sought for consolation in his library, and he found not consolation, but alleviation of grief in that forgetfulness, which devotion to interesting intellectual pursuits creates. It is our duty to act towards the dead whom we loved, as towards the living — to remember and to forget them. When

we recall them to recollection and bring them, as it were, down from heaven to earth, it should not be in the heat of the day; but they should come as the angels of old did, when they visited the earth, in the peaceful and calm shades of the evening. I have no doubt that Dr. Abbott gains from continuing in active life, not merely from its effect on the mind or body, (for he gains by keeping up his physical system, which, unemployed, he might suffer to run down,) but for its effect in alleviating his grief for the loss of his son — a son who deserved to be grieved for long, and who seemed to want nothing of the angel but the wings.

"The kindness of my friends continues unabated. In kind and judicious counsel, Robert is a father, and in affectionate nursing, a sister and mother. In one respect my case resembles that of our dear Ariana, who said, you know, that it should be recorded on her monument that she 'died of the kindness of her friends.' Would to heaven that I could enjoy her calm patience, her holy resignation."

Centreville, January 23, 1830. "I am very anxious to hear of Colonel Walker[1] and family. When I was in the crisis of my fever at P., Colonel Walker called to see me, but was refused admission, as every one else was. 'I am sure,' he replied, 'he will see an old friend like me.' I directed them to invite him to come up. He came and sat down by my

[1] Colonel Seth Walker, one of the kindest of men, for many years Register of Deeds in Rockingham county. He died in 1832. "I have shown," says J. S. to W. S., "your letter to Colonel Walker; it brought tears into his eyes — your mention of him and his family."

bed, and for some moments said nothing. Just before he rose to leave me he took my hand, and expressed his belief in my recovery in language so encouraging, and his wishes for my recovery in words so warm and affectionate, as to make the blood rush through every vein. I was somewhat overcome by the interview. But when I got over that, the recollection of it gave a nerve to my system, and I then said, that from that time I dated the beginning of my recovery. Let me hear of him."

In a letter to his father, dated February 7, he says: "That spirit of liberality, which you have always shown towards me in money matters, and I should say especially in them, if I did not perceive the operation of the same spirit in all other matters between us from the beginning, &c." . . . "I spend many hours of every day with you. I look in upon you when at study. I am with you, in full sympathy, during your hours of sad reflection." February 20. "P. S. — Sunday, P. M. I have just come across an odd volume of Seed's sermons, and have read two of them with delight. . . . Do you remember the discourse on a particular Providence, containing just enough of argument for the ingenious thinker, and enough of glowing exhortation for the warm-hearted Christian?" In reply, J. S. says: "Your character of Seed's sermons is just. I have the same odd volume, and think just so of the sermon on a particular Providence."

Judge Smith's letters to his son were, of course, mostly taken up with the little items of domestic intelligence, which are so grateful to those who are

away from home. They also show what were his feelings, and how he employed his time. "Nov. 5, 1829. I have returned to the task of hunting up the academy lands with no other guide but old deeds, two or three hundred accounts, minutes, &c. . . . . I am not sanguine as to success, but, to tell you a secret, I must have employment. My unemployed hours are heavy. I have one subject only to exercise my thoughts upon, and that unfits me for the living. Everything I see and hear is so unlike . . . . . I think, as at present advised, I shall not spend the winter at the Tremont house, but in my own comfortable home."

It was a winter of heavy pecuniary embarrassments and failures in Exeter, and this brought upon Judge Smith, as president of the bank, and treasurer of the academy, no small increase of labor. After giving an account of these reverses, he says, "You can conceive of the exercise of tongues here — all wag. Little of all I have stated is generally (accurately) known, but enough to set that little machine a-going. . . . . It is a solemn business, transferring the funds of the bank from the late to the present cashier. * * * * himself seems to feel it so." — "Strange that people cannot see a little way into the future." . . . . "It seemed very odd to me to return every night for a fortnight of this rough weather, take my meals all alone, and have not a mortal to speak to of the thousand things daily and hourly occurring."

6th February. "I am very well. Proof — nothing but shame prevented my doing the duty of

cashier. The public would have cried out, avarice! and appearances would have been against me. The world cannot know how much I love employment. How can our young men love idleness? To me it is inconceivable. If the evidence were not before my eyes, I should doubt the fact. Do you not feel as if you would like to be register of deeds?"

1st March. "I wish you had the book I have just finished — Second Series of Tales of a Grandfather. They are excellent; the most interesting parts, from I. James VI., 1603, to the union of 1705, are served up in Sir Walter's best manner. . . . . He unites simplicity, good taste, wit, impartiality, boldness, candor, shrewdness, sound judgment, a philosophic spirit, &c. These volumes have amused me much, as much as Old Mortality. He is a shrewd Scotchman. Heaven grant he may hold out my time. When I am gone, he may go as soon as he will. . . . . These Tales of a Grandfather will do something to promote the morality of government. Would that they might teach our small New Hampshire rogues good manners. You know the election is now going on, which reminds one strongly of good breeding — *lucus a non lucendo.*"

". . . I am in no danger, I think, of writing a history of Exeter, or any other history. I have not been so much engaged for many years as in the last three months. Providence seems to provide work for me, knowing, I suppose, that it is good for me. I verily think it is so. It is a great objection to the grave that there is no work there."

22d March. "It is too late in the day to talk

about the moral character of the candidate. Moral character is a good thing, but has little or nothing to do with an election. One likes to have one's connexions and friends moral, but one's governor, it is *toute autre chose.* . . . . Your cousins [deaf and dumb] have sent you and me each two pairs of fine woollen hose, spun and knit by themselves, with a pretty letter. E. says, Ariana used to knit for her father, and now that she is in heaven, she and her sisters determined in this to supply her place. If they live good and virtuous lives here, she has no doubt of meeting her in heaven.[1] . . . I need not tell you that I am very well. If I could only get rid of meals and evenings, I should do well, provided I had plenty of business to do. If I could step into your house now and then, I should be glad. I suppose you would gladly return the visit. We must each do the best we can as it is. I hope, after another winter and spring in Mississippi, you will come to us with confirmed health, and will help the good here to maintain their ground against the bad. God bless you, prays yours always, J. S."

[1] Judge Smith always took a warm interest in these nieces, and did not forget them in his last sickness. They were educated at Hartford, and once, as I find in a memorandum made by Judge Smith, when on their way home, were met by a Connecticut lawyer, who had the following conversation with one of them in writing. "Do you love your enemies?" Ans. — "I ought to love my enemies, but sometimes I forget." "Did Christ die for all sinners?" Ans. — "For all that trust in him. None benefited by his death but those who believe and trust him." A lady present wished the following question to be put. "Is the power of Christ equal to that of the Father?" The gentleman at first declined, as touching on a doctrine of scholastic divinity, and beyond their reach; but, on being urged, he put it. Ans. — "Jesus Christ has no power, but what is derived from the Father."

24th March. "I lodged at the same house with J. R., beginning the practice at D. He must, I think, advance slowly; he has more talents than he seems to have. If ——— would lend him a little owlish wisdom, it would profit him. He may make a lawyer. The matter is still *in dubio* with ———. He is wanting to himself, having the capabilities. A few years settle every man's case, rank, standing. I understand the jury (the world) have given in their verdict. Possibly he may review. . . . I had some curiosity to see how the fall in Exeter and of Exeter would affect you. Time will cure the breach, and perhaps mend our condition. It is always a great point gained to know our true condition, and ship off our foolish pride. But none of these things move the dull and heavy ——. Strange that he does not at once march up and take the Sheridan oath, 'It is in me, and by —— it shall come out.'"

After the first fatigue was over, the Mississippi climate seemed to be of great service to Mr. Smith. In a letter dated 27th December, he says: "I have had delightful rides on horseback. It is impossible for you to imagine the happiness I felt as I cantered over the plantation paths, through woods abounding with the most splendid evergreens I ever saw, and my ears filled with the music of sweet singing birds. As I rode, life seemed to come to me in the smell of the fragrant pines. I do not mean to exaggerate when I say, that thrills of returning health ran through my whole system, so exquisite as almost to occasion faintness." In the last letter that he ever wrote with his own hand to his father, (Feb. 21,) he

says, "I have gained in one month and two days no less than five pounds of good sound flesh, which I have laid out in ornamental work." The next letter that his father received was written by William's physician, and left no reasonable hope of his recovery. It contained these lines, dictated by William. "My dear father: you know what satisfaction it would give me to be able to write to you, at this time, with my own hand; but you know, too, just what the sentiments would be, which a letter written under the present circumstances, would contain. I hope that a change will shortly take place for the better. May God bless you and me, and prepare us both for his holy will and pleasure concerning me."

To this Judge Smith replied. April 10. "My dear William: I have Dr. Magoun's letter, postmarked 15th March, and Robert Smith's, same date. I need not say how they affect me. I have not, I hope, neglected you in my prayers. Heaven knows with what earnestness and sincerity I have prayed for your recovery. I can join you from the bottom of my heart. 'May God bless you and me, and prepare us both for his holy will.' At this time, as you say, it would give me a pleasure I cannot express, to have a letter in your own hand, though I can well enough imagine what it would contain, and would not have you spend any strength in writing. I am very, very glad you are with your cousin, and Dr. M. your nurse. . . . Though I have no fears that you will lack any nursing and attentions, it would still afford me the highest satisfaction, your situation will allow me, to be with you. Two months ago I se-

Judge Smith, to Robert Smith, of Mississippi. May 1, 1830. "My dear nephew: I have received your letter of the 29th of March, written a few minutes after William's death. Your and Dr. Magoun's letters, for the two preceding weeks, had, in some measure, prepared me for the sad tidings. I have delayed writing for some days, expecting a letter giving a more particular account of his life for the last three weeks. There is a melancholy satisfaction in learning the state of the poor sufferer in the last scene; how he met that enemy who is sure to conquer; the exercises of his mind; his confidence in his Maker, when all earthly help fails, &c. His sister exceeded anything I ever witnessed. She seemed wonderfully supported, perfectly resigned and submissive to the will of God. It is not strange I should now recur to her last moments. How precious would her sympathy now be to me!

"I am alone in the wide world, 'a single column, unpropped and nodding to its fall.' I cannot find words to express the satisfaction it gives me to believe, that William had every attention, kindness and comfort, after he reached your house. It could not save his life, but it must have eased his pain and softened his couch. In his letters he spoke in grateful terms of your and your wife's uniform kindness to him, and I know Dr. M. must have been all that we could desire."

In a letter to J. H. Morison, after using the same figure of a single column, &c., he adds: "But it is far from my intention to be misanthrope or cynic, if I can help it, or to let the aforesaid column hurt any

body in its descent, as descend it must, and that ere long. But I am yet very well, and more happy, or rather less unhappy than I feared."

In his common-place book he wrote, June 12, "'Be not solitary, be not idle,' the last I can command." "I have certainly enough of that perilous stuff that weighs upon the heart."

It was not, perhaps, till after the death of his daughter, that Judge Smith had begun to appreciate fully the character of his son, and to feel towards him all the tenderness of a father. In one place, after quoting the words "we can only have one mother," he adds: "It seems to me I could only have one child. Forgive me, W." Judge Smith was not given to regrets, but is not this an affecting confession of partiality, with an acknowledgment that it was not right?[1]

"I live," he said, "in solitary majesty; in oriental seclusion, in the realm of silence and the land of oblivion; left at large to pursue my own designs, whatever they may be." "I hope," he said again, borrowing the expression, I believe, in part from Oberlin, "that I bear my losses of dear friends as I ought, not from that lightness or elasticity of mind which flies from all painful thoughts, not from that

[1] There is something quite touching in what I find written in half sentences, as e. g. "☞ 'A falling house, with a single column left, (and that tottering to its fall).' Iphigenia's dream. The single column in the dream was Orestes, here, I.

'Wo unto him who leads a lonely life
From children and from kindred banished far,'" &c.

hard and hardening philosophy, which submits with sullen pride to what is inevitable, but from an entire submission to that Providence which, having made all things in goodness, orders them in mercy."

On looking over what I have written, I fear that I may have given too unfavorable a picture of William Smith. His faults were the striking incidents in a life, whose virtues, belonging to its every day current, cannot be so described as to fill out in his biography the space they occupied in the daily course of events. It has been a painful task to dwell on his infirmities. But when I remember how they caused his day, which dawned with so much promise, to close in darkness before its time; when I call to mind how bitterly he mourned over the errors, through which his early hopes and the expectations of his friends were blasted, and how solemnly he warned others against them; I feel it to be a duty, which his kind and generous spirit requires of me, to add his to the thousand examples already existing, of a noble mind, with all the advantages of education and society, given in vain, from the want of a strong and steadfast purpose in life. If the great assembly of the gifted young, who have thus wasted time, fortune, character, health, hope, and life, could be permitted to come back, with Robert Burns at their head, and exhibit all that they have suffered, in order to warn those who, with the same rash confidence, are entering now upon the same career of folly and of ruin, I can conceive of no spectacle at once so touching and so sad.

It is a great satisfaction to be able to introduce

here the testimony of one[1] who, in antiquarian zeal and knowledge, was inferior to no man in New England, and whose death, while yet in the vigor of life, was a public calamity. He had for some time corresponded with William Smith on historical matters; and in June, 1830, wrote to Judge Smith: "My acquaintance with your son was very limited, but enough to convince me of his genius and talents, and to lament that such brilliant powers should be forever extinguished. As a member of the Historical Society, much was expected from him, and, had he lived, much would doubtless have been realized. It is much to be regretted that he did not complete his History of Exeter, as the ardor and zeal with which he entered on the work, the extended and liberal plan he had contemplated, the wide range of his inquiries and researches, insured one of the most perfect local histories that have appeared in our section of the country. I hope the materials he collected have been left in such a state, that they may yet be arranged, and presented in the form of a historical deduction. Without dwelling on this subject, I would most respectfully suggest the propriety of having something of him preserved in the form of a memoir; something which shall appear in a future volume of the collections of a society, of which he was one of the founders, and an active member. One object of our society is to preserve memorials of our associates who have finished their course on earth. I cannot but hope that you will favor the society

[1] John Farmer.

with some sketch or something more, which shall perpetuate his memory."

The following obituary notice, drawn up by a friend,[1] who knew William Smith well, and who could appreciate his excellent qualities of mind and heart, may serve as a fitting close to this melancholy chapter. "Colonel Smith was a gentleman of early and much promise in professional and political life — having been admitted to the bar at about the age of twenty-one, and returned as a member of the legislature of New Hampshire in his twenty-third year. He represented Exeter with fidelity and ability, for three successive terms. His health, constitutionally delicate, had been gradually failing for two or three years prior to his decease. He was induced to try the effect of a milder climate in ameliorating his disease, and the result of a winter's residence at the west seemed, for a time, to be very favorable. But the hopes of his friends have been blasted, and the only remaining tendril that wreathed around the solitary pillar of a noble house, has been severed from the stately column it was designed to have strengthened and supported."

[1] George Kent, Esq., of Concord, N. H.

CHAPTER XIII.

1830 — 1834.

JUDGE SMITH'S STUDIES — LECTURES ON THE PURSUIT OF KNOWLEDGE — SECOND MARRIAGE — SAYINGS AND LETTERS.

JUDGE SMITH was now left entirely alone. His domestic affections, which were among the strongest feelings of his nature, had nothing to rest upon. I was with him much in those his times of tribulation, and do not think he ever knew what it was to pass a desponding day. The outward current of his life flowed on almost as brightly as before; for, if the lights of his home had been withdrawn, more of the light of heaven rested upon it. Much is to be attributed to the natural elasticity of his mind, and more to his religious convictions. But how many devout men break down under such circumstances, purely because they find nothing to do, which has interest enough to engage their attention! They muse upon their sorrows, till they have no heart for anything else. They shrink from society, and society shrinks from them. The solitude, which Providence had

made to last but for a season, is thus enlarged and perpetuated by the selfishness of their grief; their faculties fail for want of exercise, and the sad remnant of their days is burthensome to themselves and to all about them. Judge Smith did not, for a single week, give up his usual occupation. He continued in the pursuit of knowledge with all the freshness of his youthful affections; and considered it, as we have already seen from his letters to William, a merciful dispensation which had greatly increased his labors in business. "Did you never," he asked, "feel and enjoy the pleasure of ease after labor, and the pleasure arising from the reflection that you had done something to increase the stock of your intellectual and moral powers, or even your wealth?" Labor, as well as virtue, was to him its own reward. He settled his son's affairs, which had been left in a perplexed and embarrassed condition, and paid his debts. He examined and arranged all his and his daughter's papers. In 1828, he had succeeded Gov. Gilman as a trustee of Phillips Exeter Academy, and soon after was appointed treasurer, which made it his duty to draw up an annual report of the funds of the academy. Owing to the disordered state in which he found them, he examined their history from the beginning, inspecting carefully all the records and other papers which had been accumulating for nearly half a century. This required of him more than a year of solid labor; and his reports might be recommended as models, uniting with accuracy and clearness in minute details, those sound and comprehensive principles, by which the affairs of such an insti-

tation ought to be administered. It was a subject which he had greatly at heart as long as he lived.

He was much interested in the popular movements for the diffusion of useful knowledge, which, begun a few years before in England, had then just reached this country. He went through quite an extended course of reading on the natural sciences. During his daughter's sickness he had read several treatises on consumption, and now, with the eagerness of a young man, went into the whole subject of physiology, but particularly that portion of it which is called animal mechanics. This science, not less than the most magnificent and stupendous of all sciences — that which treats of the heavenly bodies — led him to bow in reverence and humility before the Almighty Creator. The weakness of our own frames was to him an evidence of the divine wisdom and goodness, through which they had been formed. "The liability to pain and injury," he said, "only proves how entirely the human body is formed with reference to the mind, and to a state of trial and discipline; since, without the continued call to exertion, which danger and the uncertainty of life infer, the development of our faculties would be imperfect, and the mind would remain, as it were, uneducated. It is one thing to make a machine for the purposes of the body only, and another to make a machine for a body with a mind and soul. Weakness and liability to injury, therefore, imply no imperfection in the frame of our bodies. A deep contemplation of the subject will evince the incomparable perfection both of the plan and execution. The body was in-

tended by our all-wise, all-good and merciful Creator to be subject to derangement and accident, and to become in the course of life more and more fragile, until, by some failure in the frame-work or vital action, life terminates. That the soul may live, this tabernacle of clay must be dissolved and perish."

Geology he examined with the same feeling of devout admiration. "It brings us," he says, (and I quote his words to illustrate his habits of thought, rather than because they are original, for they were probably borrowed, in part at least, from some of the treatises which he had been reading,) "into intimate acquaintance with the noblest objects and phenomena of nature — with the grand features of mountain scenery — their towering summits — their eternal snows — the abrupt waterfall — the river now tumbling and foaming through a narrow gorge, now gently rippling over an expansive valley, now winding through wide alluvial plains to the bosom of the mighty ocean — with earthquakes, volcanoes, and the flood which drowned the ancient world. What mighty changes have been produced in the earth by these! — now rounding a pebble, now laying the foundation of future islands and continents. The constant progress of animated existence, ever varied, but ever adapted to the circumstances which attend it; — who can contemplate without religious awe and veneration, the arrangements, whether of the organic or mineral world, (the sure marks of a First Cause,) acting by uniform, invariable laws, bringing order and utility out of the seeming elements of chance and confusion; connecting the peak of the mountain

and the bottom of the ocean in one chain of mutual dependence, and rendering the whole subservient to the existence of that abundance of life and enjoyment, for which all has been beneficently contrived."

In the winter of 1830 – 1, Judge Smith zealously engaged with several gentlemen of the village in getting up something like a Lyceum in Exeter, "less," as he said, "with a view of teaching others, than of stirring them up to teach themselves." He gave the first lecture, and the last, of the course. He spared no pains or labor in the preparation, and transcribed more than once or twice the greater part of what he wrote. "Speaking of myself," he said, "I set down the labor, which my small part in the concern imposes, as nothing. Indeed, I am persuaded that there is nothing better for a man, all the days of his life here upon earth, than labor spent in a good cause; and such I believe this to be. It would give me pleasure to aid my young fellow-townsmen in acquiring a competence of this world's goods, and far more to aid them in gaining that which is better than riches — useful and practical knowledge. The man who has the ability to give this aid in any the smallest degree, and withholds it, is criminal. The aged especially owe it to those who have just entered on the journey of life, through which they have nearly passed, to fit and prepare them for what they may be called to do or to suffer; above all, to point out to them the dangers that beset their path, and show them the road to usefulness, both as it regards themselves and their country.

"It is not a narrow sentiment to love our own

town, our neighbors and the friends that surround us; to wish that they may be particularly distinguished and spoken of with applause. To do good, we must confine our labors to a circle where our exertions will be felt; that is, to a small one. I have no particular desire that our houses or furniture, our equipages, our dress, should be finer than those of others, or that we should be richer than they. All this is mere appearance — the outside of things; but to see our townsmen better educated, possessing more knowledge, better fitted to act well their several parts in life, and withal possessing better manners, more temperance and sobriety, more virtuous habits — this is a consummation, a state of things devoutly to be wished. Life is surely worth more, in such a society, than in such as we commonly meet with. Who would not choose to live and die, when his time comes, in the midst of such a society?

"There is an age when it is unseemly to go to school, but there is no period of life when it is unseemly to learn; and most true it is, that after all that colleges and schools can do for us, the greatest part of the work of education must be done by ourselves, if done at all. We finish our college education but to begin our studies. He has done well in the short period of academical life, who has acquired a taste for letters, and a capacity to acquire knowledge.

"My design in this lecture is to lay before you a general view of the wide field to be entered upon and cultivated by you, as your opportunities may allow, or your inclinations prompt; and suggest some considerations to induce you immediately and in earnest to

set about the cultivation of your intellectual powers, that you may qualify yourselves to be useful and respectable members of society, and what is far more, provide for yourselves a source of pleasure and happiness, while engaged in the active business of life, and when that is over, comfort, solace and respectability in old age."

This was a subject in which Judge Smith's whole heart was engaged. The love of knowledge, which had dawned like the star of his destiny on his early youth, shed its benignant light on his declining years, and cheered his pathway to the grave. "I have all my life," he said, "been so ignorant as not to know the value of ignorance. I think with Goethe, who once said with a smile, 'I have always found it good to know something.'"

"I am afraid," he continued in his lecture, "that the wide field I have opened to your view may, in some less bold minds, serve to repress and intimidate, rather than excite to exertions. They see so much to do, so great and arduous labor to be performed, that they are ready to forego all the rewards, however great, it promises. Many a traveller faints at the view of the towering Alps — mountains piled on mountains; he is content to remain all his life in the valley below, rather than attempt the difficult ascent. I would not conceal from you the difficulties that lie in the path of knowledge. Indeed I am acquainted with no good thing attainable without labor and toil. Man was made to labor, and I sincerely pity him who finds nothing to do. '*Dii laboribus omnia vendunt.*' The gods do not give, but sell everything to industry.

But at the same time, I am persuaded there are few who set out in earnest to acquire knowledge or any other good thing, that may not count on success. 'Seek and you shall surely find,' is as true of knowledge as of the pearl of infinitely greater value. Besides, the knowledge I recommend to you, is not of the abstruse kind, lying at the bottom of a well, and to be fished up only by curious machinery, and by a few favored individuals. Literature is a republic, and every man may aim at the highest place. The most useful knowledge lies near the surface; and that is the case, (so good and so bountiful is heaven,) with all good things for man here upon the earth. We all know we have minds as well as bodies, and that the mind is the more excellent part, and susceptible of the purer and more refined enjoyments; why then should we not lay up a stock for its use and enjoyment, in all times to come? You may rest assured, my friends, that the heart cannot be enlightened, if the understanding is left in darkness; nor the intellectual part be healthy, while the moral nature is unsound.

"But some are ready to say, 'I am not blessed with genius, and without genius it is impossible to get knowledge.' I have had occasion, in my time, to remark innumerable mistakes on this very subject. By genius, is to be understood that peculiar structure of the mind inherited from nature, which possesses uncommon strength, particularly in the faculty called invention. Many suppose the man of genius a being sent into the world, ready made up, for everything great, and almost superhuman. He acquires know-

ledge, pretty much as the possessor of Aladdin's lamp acquired riches, a splendid palace, and a fine princess for a wife. The genii, answering to our genius, could not procure him the princess to wife, but it brought him riches and the fine palace, and the wife came of course. He had only to rub the old lamp, and in a twinkling all he desired was his; it was brought by his genii. I have known a good many of these great geniuses at school and at college. They were supposed never to study, or studied nobody knew how or when. They struck out great things at a single heat. Now in sober truth these same geniuses were mostly idle, irregular fellows. They scorned all labor and all restraint. I have lived to see the beginning, the middle and the end of most of them that started in life when I did; and I must say that the young men of no genius, in college language, that is, of common minds and industrious habits, generally excelled these *soi disant* geniuses in scholarship, and when the business of life commenced, and the prizes were to be contended for, the geniuses commonly broke down early, and the prizes were won by a different class of men.

"I do not deny that there is a difference in the minds of men. Some acquire knowledge more easily than others. I have myself known a few — some of them intimately — not exceeding, perhaps, seven or eight in the whole, who seemed to get knowledge without effort; pretty much as Colburn solved his questions in arithmetic, by a sort of intuition — a summary mental process. But we err in calling eccentricity genius. It is quite a different thing. Elo-

quence is not genius. This word should be used to characterize only the highest endowments of mind.

"Set aside a few real geniuses, and a small number to whom nature seems to have allotted less than their fair proportion of intellect, and all between may boldly enter on the career of knowledge, and contend for the prizes, which society awards to the successful competitors. I have heard the idle and the slothful, who meanly shrunk from the contest, ascribe their failure to the want of genius, when I knew it owing to the want of exertion. If it were not invidious, I could name the men. I have no hesitation, therefore, in saying that the literary men of my acquaintance are indebted for their fame to labor, and not genius. Viewing man as he comes into the world, with faculties susceptible of cultivation — as the clay in the hand of the potter — it is not so much genius which has made one man to honor and another to dishonor, as culture, and that is but another name for labor and exertion. So that every man is indebted chiefly to himself for his knowledge and learning, whatever they may be. Generally speaking, they are procured, just as competence or wealth is procured, by honest industry and unremitting labor. The zeal of the aspirant urges him on from one to another, believing nothing done, so long as anything remains to do.

"Some of you must have observed young men in the same neighborhood, nay, in the bosom of the same family, one called a genius, and another scarcely above the point of mediocrity. They start together in the race of life, and you have seen the genius sink-

ing in the scale of learning as well as character, and the mediocre plodding on in his slow but sure way to the temple of science, and at last reaching the eminence — the pride of his family and friends, and no less so of his country. I am confident that I do not go too far in affirming, that extraordinary intellectual powers as often prove the hindrance, as the procuring cause of learning. Short steps, take enough of them, will carry you safer to the pinnacle, than long strides from which there is always danger of stumbling and falling to the bottom of the ascent. The best genius, after all, is that ardor of mind which prompts to application. Apply, and you are safe; remit your exertions, and it is easy to see the end thereof, your genius to the contrary notwithstanding. It is of the nature of mind as well as body, that its powers should enlarge and improve by exercise, and grow torpid by sloth and inactivity.

"The excuse, then, of want of genius or capacity, generally fails. To me it is clear that, in this favored country, all who have common powers of mind with a sound body, have the means of acquiring a competent share of learning. I do not go so far as Sir William Jones. It was a favorite opinion of his, that all men were born with an equal capacity for improvement. Still it must be admitted that their means are not equal. Some are favored with leisure for intellectual pursuits; with books, philosophical apparatus, with instructers; while others are obliged to toil for their daily bread, and so have comparatively little time to spare for the cultivation of their minds — are without books, and without instructers. The one

class have advantages denied to the other. What then? On the score of leisure, have not the most laborious their leisure hours? They may not be spent in dissipated company, or in the haunts of intemperance; but they may be wasted in idle company, or, what is not much better, doing nothing. Let every man take an account of his idle hours, and he will be surprised at the sum total — at twenty-one, years, and at forty, many years. There is no period of life, when the cultivation of the mind should cease to be an object. Whether we shall enter on the next state of existence with the intellectual cultivation attained in this, I know not; but sure I am that it is good for a man to possess an improved and cultivated mind, rich in moral and intellectual stores, all the days of his pilgrimage here upon the earth.

"But books and instructers in sufficient numbers are wanting. Then make the better use of a few. I am very sure, from careful observation, and from some experience on the subject, that the multitude of books does not of itself give even book knowledge, still less insure careful reading, and make learned men. If one mind be in danger of starving for want of books, another is in danger of surfeit from too many. I have not forgotten my early days; my lot was cast in a part of our country, and at a time, when, except the best of all books, a single volume, there was almost literally none. I have walked miles to borrow — not novels, for there were none — but a volume of history or biography. The long walk and the scanty food procured only served to whet my appetite the more; so that before

I had reached home with my treasure, valuable for its scarceness, I had literally devoured the greater part of its contents.

"If time would allow, it would be in my power to show how others, under difficulties such as neither you nor I have had to contend with, have acquired great learning and fame — have given to themselves an education of the very best kind. They first felt in their souls a thirst for knowledge, an ardent, unquenchable desire to acquire it, and then set about the work in earnest, — with all their minds and all their strength. They conquered, though opposed by a host of enemies — want of leisure, want of instructers, want of books, want of money, sometimes want of health — some even suffering imprisonment — some engaged in uncongenial and distracting occupations; obliged to contend against the force of opposing example, the discouragement of friends and relations, and withal, knowing, as regarded some, that the better part of life was spent and gone. These unpropitious circumstances have all, separately or in various combinations, exerted their influence either to check the pursuit of knowledge, or prevent the very desire of it from springing up; but all in vain. In many cases the opposition only served to carry the aspirant still higher and farther in the delightful road.

"Perhaps, indeed, we err in setting some of these things down as hindrances. I verily believe, from my own observation, that the tendency of poverty, for example, to crush, is a far less hindrance to a strong mind, than that of wealth, ease, powerful

friends, &c. to corrupt. What is got through difficulties overcome and obstacles surmounted, acquires, from that very circumstance, a new and enhanced value. There is as much and nearly the same danger, in receiving a sugar-and-water education, as in receiving none at all — in the humors which follow from being under-worked, over-fed, and from false indulgences, as in the feverish exhaustion that accompanies over-work, under-feeding, and neglect. Young says, 'Pride was not made for man.' We believe leisure and indulgence, as little. We have all seen, even in this country, a little of the tendency of hereditary fortune to corrupt and to damp the ardor of mind necessary to acquire knowledge, so that we are prepared for the saying of Lord Kenyon to a rich friend, taking his opinion of the probable success of his son at the bar, — 'Sir, let your son forthwith spend his fortune, marry and spend his wife's, and then he may be expected to apply with energy to his profession.'

"I had intended to conclude this lecture with a few biographical sketches of self-educated men in Europe and in our own country. But it would be cruel to task your patience any longer. I ought rather to thank you for your patient attention, and pray you to pardon my over-earnestness on the subject, — a favorite one with me, — the diligent employment of time, — not in amassing wealth, for that is our besetting sin, but in the cultivation to the utmost of our intellectual and moral powers. These sentiments and feelings I have long cherished, and instead of decreasing, as I approach the goal of life,

they grow with my growth in years, and strengthen with my bodily weakness and decay."

In the same lecture, with an implied reference all along to the daughter, whose life had been so beautiful an illustration of his remarks, he said, "I would express my most ardent desire, one I have long felt, — now, alas! wholly disinterested — that the style of female education, in the books they read and the sciences they study, should be somewhat raised and improved — made a little more scientific and intellectual than it now is. The present state of society, and the business that now occupies females, give the sex more time at their disposal than formerly; and he must be less conversant with women, or less fortunate in his acquaintance than I have been, who can for a moment doubt their capacity for the highest degree of mental culture and improvement. I have been an instructer of youth of both sexes, and found it as easy and assuredly more pleasant, to convey knowledge to female pupils, than to those of my own sex. And, speaking in general terms, their advances in education have been superior. Though women have no occasion to cultivate the sciences for a profession, they are necessarily the companions of professional men, and the sweeteners of their toils. Now, also, I speak from experience; and it is not hazarding much to say, that conversation with educated men requires mental cultivation. . . . What educated man would not desire a companion for his understanding, one who could appreciate his knowledge, and, what is more, purify and refine it? Dr. Johnson has said in his way, 'It is a miserable thing

when the conversation can only be, whether the mutton should be boiled or roasted, and probably a dispute about that.' If there are, however, men who would prefer an uneducated woman, there is no reason to fear that, after all our endeavors, a sufficient number will not remain. I would by no means depreciate accomplishments, but we must remember they are the ornaments, not the objects of life. There should be something solid to ornament. Surely a little genuine true science is a better and a more enduring good. It will last longer than taste in dress, singing, dancing, drawing, or playing on a musical instrument. I admit accomplishments add grace to the beauty and vivacity of youth; but when the beauty, and vivacity, and youth are gone, they are not quite so graceful, and they are at all times of small value, according to the domestic estimate. The charms of youth should be succeeded by the wisdom and knowledge of age.

"Every woman, it has been quaintly said, should either look well or talk well. One of the most agreeable fruits of knowledge, is the respect and importance it imparts to age. It requires an effort to respect an ignorant old man; and the case of an ignorant old woman is not much better. I have often heard it said that learning tends to make women pedantic, affected, and fond on all occasions of display. My experience, and a most intimate one, is quite the other way. I have found women more given to conceal than to display their knowledge. This charge of pedantry is, I believe, often made, not because the accused shows too much learning; but because the

accuser is conscious he himself has too little. After all, it is the very superficial education which is the most likely to be ostentatious. I see no contradiction between a well-educated female mind, and true modesty, gentleness, and propriety of manners and conduct.

"We sometimes hear it said, that the true theatre for a woman is home — the sick chamber — and that it is most honorable for a woman not to be spoken of at all. A good nurse, and a domestic woman, are to be sure two very good things; but why should either be the worse, accompanied by the highest mental cultivation? I doubt whether it be in our power to prevent women being talked about. The evil, if there be any, must be in what the talk is. I think Mrs. Barbauld, Mrs. Hamilton, Miss Hannah More, Miss Edgeworth, Miss Sedgwick, and many whose names will readily occur to you, have no complaint to make that they are talked of."[1]

Judge Smith's second lecture was taken up mostly in carrying out some of the suggestions contained in the first. He spoke of the pleasures of knowledge, and of the power by which it has led men on through discouragements and trials. This part of the subject he illustrated after the manner of the Library of Entertaining Knowledge. Among those whom he had personally known, he mentioned Noah Worcester, "a shoemaker before and when he was a clergyman, and who attained no mean distinction; Roger Sher-

[1] Some of these suggestions, it will be seen, are taken from Sidney Smith.

man, another shoemaker, who educated himself, and whom it was a great treat to hear converse; Dr. Nathan Smith, who, without family, connexions, fortune, patrons, education, raised himself by his own exertions to the highest rank of physicians and surgeons in our country. He educated in a short life thousands. Where and by whom was he educated?[1] We have another countryman, a native of Massachusetts also, who deserves to be mentioned at the same time with Frankin; I allude to Dr. Nathaniel Bowditch. I remember the boy when he left the Salem town school, at the age of ten. A few such men would ruin our high schools and universities. I might name William Wirt, who has attained the highest rank in the profession of the law, among the self-educated men. It so happened, that in the various scenes of my life, I became acquainted with his early condition in the world. It is not easy to say in which he most excelled other men, in goodness or greatness. His knowledge was grafted from the tree of life, and all its fruits were good.

"It must be admitted that knowledge does not always make its possessor virtuous and happy. But the tendency of intellectual culture, is to purify, civilize and elevate, and I do not believe many instances can be found, of men who have struggled with diffi-

[1] Judge Smith, although not related to Dr. Smith, was thought by many to resemble him in his personal appearance, and was sometimes mistaken for him. Once in New Haven, a gentleman addressed him as Dr. Smith. "Yes," he replied, "I am Dr. Smith, and a very clever man, but not the man you take me to be." Judge Smith had received the honorary degree of LL.D. from Dartmouth College in 1804, and from Harvard University in 1807.

culties in acquiring knowledge, and so must have acquired habits of industry, diligence, self-government, self-denial and deep meditation, who yet have remained bad men. How can he possibly continue a slave to the coarser gratifications of sense, who has tasted the refined pleasures and enjoyments of an enlightened understanding? A clarified mind is most likely to be accompanied by a pure heart. There may be distinguished scholars who are bad men; but we know not how much worse they would have been, but for their knowledge and love of knowledge. I am persuaded knowledge is at the same time directly power, and indirectly virtue, and generally productive of happiness. Who will say the same thing of riches, of honors, of sensual pleasures? What amusement is so innocent, and at the same time so cheap as a book. I know there may be corrupting books; yet I believe, generally speaking, they are far less so than dissipated and idle companions. Did you ever know of a person towards the close of life, amid all his regrets, grieve at the time devoted to useful studies, feel knowledge a drag on the heaviness of old age, or who would exchange it for anything but true virtue and the pure joy of heaven?"

These lectures gave pleasant and profitable employment to many otherwise solitary hours. Early in the winter, Judge Smith said to a friend, "As the winter sets in, and shuts out visiters, I am obliged to draw on such resources as I have at command. My health is quite good, and I do not despair of a reasonable share of enjoyments." He said in a letter written 29th January, 1831, a few days after the first lecture

was delivered, "I have been very busy — never I believe more occupied in my busy life, but though occupied, it has not been with people I love, or those who love me. How delightful it would have been to have you these long and cold evenings. My only pleasure has been from books. A little pleasant chat is a fine accompaniment to reading." To another friend, he said: "I have been very busy, and of course happy — am now returned to reading, and of course not very miserable. What a dreadful world would this be, if it were not for the troubles we have!"

From a letter to Miss Elizabeth Hale, 14th March, 1831. "Friday evening I returned to Exeter, to my no home. Even you, my dear Elizabeth, with all your imagination, cannot enter into my feelings on such occasions. Home with you means father, mother, brother, sisters, friends; but in my vocabulary, it means only a house — there is no association. 'Alas! nor wife, nor children more shall he behold, nor friends, nor sacred home.' I must not complain of the dispensations of Providence, and I do not. I have a reasonable share of fortitude, and bear the ills that flesh is heir to, as well, I believe, as most people; but I am at least capable of receiving happiness, and want some earthly object to engross my mind, affections and attentions, and to bestow on me what she can."

To Miss Hale, June 4, 1831. "I am not solitary. A favorite nephew[1] at Franklin, is on a journey of

[1] The Hon. Robert Smith, now a representative in congress from Illinois. He was the son of Judge Smith's brother John.

two months to the westward, and has deposited his household gods with me, in the vacant niche on my altar — his wife — a sensible, well-educated, lively and affectionate woman. I take the good the gods have provided for me most thankfully. I must show her to you, and you must love her, but not so much as I. You know I am blessed with a disposition to enjoy the good without repining, because it is not so permanent as I could desire."

The summer was spent not unhappily, and the autumn put an end to his solitary condition. On the 20th September, 1831, he was married to Elizabeth, daughter of the Hon. William Hale, of Dover, New Hampshire. We trust it will be long before it is proper to speak of her with the same freedom with which we have spoken of all who, a few years before, had belonged to Judge Smith's household. Through her influence, his home once more resumed its former cheerfulness, and the eleven years that remained were among the happiest, if not the most useful of her husband's life. He seemed to have recovered what he had lost in his daughter and wife, and the mild influence of their memory was not less dear, nor less fondly cherished, because associated with her who had now succeeded to their place.

The feelings with which Judge Smith entered on this new relation, may be inferred from the prayer which he wrote at the time: "O Lord, we thy servants have now entered into a new relation to each other, the holy estate of matrimony. We humbly implore thy blessing upon us, that we may faithfully perform the vow and covenant betwixt us, and may

forever remain, as long as we live, in perfect love and peace together, always living according to thy holy law. Teach us, by thy good spirit, to bear with each other's infirmities, to love each other with a pure, fervent, and sincere affection, next in degree to that we owe thee. Grant us, if it please thee, health of body and soundness of mind, and enable us to promote the joy and to alleviate the sorrows of each other; to love our parents, relatives and friends, with increased affection; and finally grant, O Holy Father, that this new and most intimate connexion, by thy special blessing, may minister abundantly to our comfort and happiness here on earth, and above all, serve the better to prepare us for a happy immortality in thy kingdom above. Through Jesus Christ, our Lord." [1]

To Mrs. Walker, September 22, 1831. "I believe I have now a good companion for the short remains of my mortal life. She is too young and too good; but she will be likely to grow older, and probably in such company worse; but, as I shall grow better in her society, we shall approach nearer

[1] A note to the town clerk, September 2, is characteristic. "I am about to marry, and want your aid in some of the preliminaries. The lady would be glad not to be tormented before the time, and therefore wishes the publishment as private as possible, so that the gossips may do their wondering and gossiping all at once. Let me beg the favor of you to keep this entirely to yourself till the 20th of September, and I will reward your silence; give me publishment, and I will see that it be managed according to law." To Miss Hale, about the same time: "I am not aware that the public know anything, as yet, of our plan. Let them remain in ignorance till the 20th. Then I promise them a holiday. I think they will suspend all other business, and lend themselves entirely to us. How flattering!"

to each other, and thus the inequality the world complains of in the match will gradually diminish; and I sincerely hope, at some distant day, she will follow me to heaven. There is nothing to be said, after this, but that I should, at the same distant day, be glad to see you there, and in the meantime, sincerely wish you all manner of felicity. We — I am glad that I can now say we — shall be glad to see you at our home — I hope I have now a home — and your good husband, as soon as your convenience will admit. I must depend on your breaking this matter to sister Morison and family, in the most discreet way. To the rest of our friends you need use less caution. You may say, I could no longer have supported the solitary and desolate situation in which Providence had placed me, especially after a door of escape had been opened."

To Mrs. Sarah P. B. Smith, of Illinois, he said: "I am no longer the desolate, solitary, dull, old stupid uncle you parted with a few weeks ago; but a young, sprightly, married man, just entering on the active scenes of life." "Of all men, I was the last made to be alone. My heart, the best part of me, is still young. It always has, and I am pretty sure always will, love female excellence of every kind."

From this time there were few incidents in Judge Smith's history. The current of his life was smooth, and with no striking variations in its course. It was not like the African stream, which is lost in the wilderness; but as it went on, it was imperceptibly enlarged, growing deep and broad and calm, reflecting the still over-arching heavens, from which its

waters had come, and the little flowers which, on its borders, were drawing from it their daily food. His life, not divorced from the stern virtues which had marked his character, and which still knew how to make themselves felt, was made up mostly of those silent charities, the retired thoughts and affections, which flow out so gracefully in the daily intercourse of home, in looks and tones which cannot be transcribed, in words which, when preserved, like the last year's flowers, give but a poor idea of what they were, and in acts which might seem too trifling to be detailed, or which lose their charm when brought out from the privacy in which and to which they were born. None but those who had the privilege of spending some time in his family, could fairly understand his character; and it was curious to see how the feelings of these, especially the young who were thus brought in contact with him, were sometimes changed. He whom they had been accustomed to think of as a severe judge and censor, delighting to make the peculiarities of others the objects of his keen and merciless satire, proved, to their great surprise, to be a man of real tenderness, one to whom they could go in the utmost confidence, sure that all proper allowance would be made for them, and that if their general purposes were right, their little follies and excesses would be treated with every indulgence. I have never known a man to whom I should be less willing to propose anything dishonorable or unjust, however it might seem to be for his advantage; but if overtaken by even a serious fault, there was no one whose confidence I should be more

ready to seek, or by whom I should be more sure of being kindly received. There was nothing of that supercilious condescension, with which good men sometimes view the errors of the weak, and which, to a quick and sensitive mind, is more painful and repulsive than any severity; since in its assumption of rectitude it is certainly mingled with pride, and probably covered over with hypocrisy. He sometimes, indeed, made himself and his friends merry at the expense of the world; but he had nothing of the moroseness of age, of disappointed ambition, or a pharisaical virtue. The sportive humors of a child could not be more free from bitterness than his wit. His nearest friends were most likely to be its objects, especially those who were able to defend themselves. For instance: His wife said reproachfully to him, as the horse was drawing them up a steep hill, "My father always walks up all the hills." "So did my first wife," was the reply. "There," said Mrs. ——, giving him some trifle, "that is in return for your abuse." "Yes," said he, "you are like the sandal tree, that sheds its sweetness on the axe that cuts it down." "Then you intend to kill me, do you? When do you mean to do it?" "Not till you are good; I think you can't have better security for your life."

[A few of his humorous sayings are here inserted; but when read in a book they give no just idea of his wit.]

"Don't you see I am acting the pig — gnawing the cob from which you have been cutting the corn." J. S. "You are very much at home in the character, certainly."

"He is reserved, cunning — like an old, empty trunk locked up. What is the use of locking it, when there is nothing in it?"

"I saw 'for sale' written on his forehead, the moment I set my eyes on him." Being at another time asked about this same man, Judge Smith replied, in shrill and humorous tones: "If there is an honest man in the world, it is he." Another distinguished man, who had read law in Judge Smith's office, being accused in the public papers of having betrayed his confidence, by making improper use of secrets, which he had got from him while a student; the judge laughingly said, "That cannot be true, for I never had any secrets for any one, and certainly no confidence for him to betray."

"Mr. P. has too much the spirit of self-vindication. He keeps alive what would soon die of itself, and magnifies the lies of his enemies."

"—— —— —— —— have acted like the devil, i. e. like themselves; but they shall not rob me of my enjoyments; I will be happy in spite of them."

"On that night could not the king sleep, who commanded to bring the book of the records of the Chronicles, and they were read before the king." "Judicious enough. The journals of our legislatures, reports of committees, and speeches of the members, would be still better opiates." "—— —— has common sense and a disposition to chimerical scenes; the former lies dormant, the latter is in full operation." "When I find a woman sillier than the fashion, I pity her, and can't help feeling a little contempt for her." "Drive away folly, but

not merely one kind to let in another." "'Asmodeus was seated by my side, reading a Sunday newspaper, his favorite reading.' Strange employment for a devil."

"Is it true that lawyers seldom make wills of their own? If the fact be so, does it not arise from the many foolish wills of others their practice makes them acquainted with?" Judge Smith once refused to draw up a foolish will. "What!" said the man, with surprise, "have n't I a right to make such a will as I please?" "Perhaps you have; but I have a right to decline being the instrument of your folly." He always spoke with commendation of that clause in Governeur Morris's will, in which, after naming a certain sum for his wife, so long as she remained his widow, it adds, "and six hundred dollars more per annum if she should marry again."

"Have you got the rheumatism, my dear? It seems to me you stoop more than common." "Oh no, that 's my modesty; it is only my modesty that makes me stoop, — though I confess it took a different turn in Washington. He was erect."

Judge Smith, used to tell, in a very amusing way, a story to illustrate the folly of an author's giving away his works. "Judge Thornton received from his minister a copy of a sermon that he had just published. In a few days the minister called, and asked if he had read it. 'Yes.' Lie No. 1. 'How did you like it?' 'Very much, indeed.' Lie No. 2. 'But,' taking up the pamphlet, 'the leaves are not cut.' 'Ah — Oh — I — I borrowed it before you sent this.' Lie No. 3.

"May 5, 1833." (I use Mrs. Smith's words.) "The seringas, after a long delay, began to display their white blossoms. Judge Smith announced it, by saying 'last night the seringas had a meeting; the seventh vice president in the chair; only five secretaries were present, which made them fear how they should get on; but at length one put the question, whether they should delay blooming a little longer, or come out the next morning; the latter proposition was finally carried by an overwhelming majority.' This was justly ridiculing the unnecessary multiplication of officers and forms, now so common. Perhaps there was no morning in which the breakfast table was not enlivened by some such *jeu d' esprit*, and often far better. Alas! that there is no way to catch and make tangible the aroma of such wit. Breakfast was his favorite meal; he liked it long, and good and social; he would like to have emulated Lord George Germaine in punctuality — his lordship always entering his dining-room while the clock was striking the dinner hour — but bore with his wonted good humor, either the too much haste or too much delay of the operatives. When I say that he liked his breakfast good, I do not mean that he touched the verge of what he loathed, an epicure; but that he had not that stupid indifference which is discouraging to good housekeepers."

E. H. S. "It may be truly said of you, when you are carried to your long home, that you have raised more laughs than any body within fifty miles of you."

J. S. "Why yes, dear, what you say is very true, for those who could not laugh with me could

laugh at me, so I've been very fortunate." This badinage was not without a mixture of truth; for Judge Smith used to intimate, that in laughing at others he broke no Scripture rule; he only did as he was perfectly willing to be done by. Indeed this delight in the ridiculous was a family trait, and never seemed to give offence; brothers and sisters, uncles, aunts and cousins, were sure to have every little peculiarity ridiculed, and placed in the most exaggerated point of view. They thought themselves descended exclusively from the Scotch, but one cannot help suspecting, that they must either have gained some pure Irish blood, by some remote intermarriage, or else that the very air of the Green Isle had infected them with its characteristic love of fun. One might go farther and say, that it was not only a family trait, but that it pervaded the first settlers of his native town. Judge Smith, speaking of their decidedly religious character, said that they went to church on Sunday, practised all that was good in the sermon through the week, and laughed at all that was ridiculous in it; and verily we can find some excuse for them, when we hear quoted such a prayer as that of the Rev. Mr. ——: "Shake this people over the pit of hell, but do not, O Lord, let them fall into it."

That Judge Smith related an anecdote showing off some weakness of his own, as freely as that of another, is illustrated in the account which he delighted to give of his interview with R——, the tory bookseller, at Philadelphia. Always in pursuit of books, he called at Mr. R.'s bookstore, and on his inquiring

for some rare book, "Sir," said Mr. R., "I perceive that you are a man of letters." Valuable books were produced, offers of procuring others from his brothers in England were made, and the young member of congress doubtless drawn in to buy more books, and give larger prices than he had intended. He told this to his travelling companion, Mr. Ellsworth, as he was returning to the north. Mr. Ellsworth stated that exactly the same compliment had been addressed to him by Mr. R. on his making a similar inquiry; but that the words, "Sir, I perceive you are a man of letters," did not make him alter his plans, nor entice him to buy a single book, that he had not previously intended to buy.

Judge Smith had sometimes the mortification, or what to others would have been the mortification, for he cared nothing about it, of having what he had said as nonsense and meant for such, reported as wit.

Something of his characteristics, his modes of thinking, and his quiet, but not inactive life, may be learned from his private letters. If they relate to small things, let it be remembered that these small things, in the unguarded moments of domestic retirement, are what indicate the true character. "I feel," he said some months after his marriage, "as if the old state of things had returned, and the ills that flesh (old flesh especially) is heir to, had been so obliging as to keep away for a season."

To Mrs. Smith, 22d December, 1832. "Your room is comfortable, and your husband as happy as he can be without you; but I am Swedenborgian enough to believe you are by my side, and strange to

say, I have no desire to talk nonsense to such a presence. In all senses, real and spectral, I am your most affectionate husband."

To Mrs. Walker, 12th March, 1832. "Your old acquaintance and friend, Mrs. F. will not be long with us. I fear she will not see June, a fatal month for our house. She is in an excellent frame of mind, perfectly resigned. All her children, especially A., have been with us through the winter."

To Mrs. Walker, 30th March, 1832. "Your and our friend, Mrs. Furbur, left us for a better world Tuesday evening, and was buried yesterday. She suffered considerably for some days, but the state of her mind was delightful, her patience held out to the end. Whatever of intellect and heart she possessed, seemed in exercise without any display; she was, as we trust, fully prepared, perfectly resigned, and has made a blessed exchange of worlds. We left nothing undone, to smooth her dying pillow. Her father (a very good man) and mother happened to come on Sunday. Eleven of the family, including her four children, were with us at the funeral. And a Free-will Baptist preacher, (her denomination,) preached a very good funeral sermon, from the text, 'A good name is better than precious ointment, and the day of death than the day of one's birth.' She has indeed left behind a reputation which might be envied by many of superior ability; she seemed to me anxious to follow the example in dying as in living, of our dear departed friends. She could hardly have chosen better models."

The "old acquaintance and friend" here spoken

of with so much feeling, had been several years a cook in the family, and had endeared herself by her gentleness and fidelity at all times, but more especially in times of sickness. She left a son, Joel Furbur, about ten years old, whom Judge Smith kept with him out of regard to his mother. He was an unpromising child, and for some time it was doubtful how he would turn out. As soon as he was far enough advanced in his studies to join the academy, the judge took him in, as one of his own family, defraying all his expenses, and offering, when the time came, to give him a college education. This he declined, and after remaining in the academy three or four years, he decided to go to seek his fortune in the west. Judge Smith provided him with funds, and with letters bespeaking for the young man the good services of his friends in St. Louis, and as he was leaving home, (October 10, 1840,) put into his hands a paper, suggesting the principles by which his life should be guided. This departure of one who had come under his roof a little child, who had so long been the creature of his kindness, and who was now going out into the wide world, without established principles, experience or friends, was an event that touched his feelings, and gave rise to much thought and conversation as to the probable success of the experiment. Joel engaged first in a dry goods store, then as a teacher in a school, and then, under the influence of strong religious convictions, began the study of divinity, with the Rev. W. G. Eliot. His character was blameless ; he secured the confidence of those who knew him, and was treated with great kindness by the

friends,[1] to whom Judge Smith had commended him. In 1842, his health failed; he set out for New England, hoping once more to see his early benefactors; but at the end of the first day's journey, after leaving Pittsburgh for the east, he was put on shore from the canal-boat, as too feeble to go farther, and there died, so entirely among strangers, that it was only by Judge Smith's parting letter, which was found upon him, that his friends and the place of his residence were known.

To Mrs. Walker, May 31, 1833. "My dear Sarah: J. H. M. gave us the first information of the death of your mother, and the probable death of sister Morison. Though he came away on Wednesday, he had not heard of the event. I can sincerely sympathize with you on these dispensations of Providence. Both were good women, and leave those behind them who will long cherish the remembrance of their worth. I am not ignorant of the sweetness of such recollections; they soon cease to be at all painful. Our departed friends are now happily secure from the pains and afflictions incident to life, and safe in that rest which remaineth for the virtuous and the good. You cannot fail to have pleasure in reflecting on the many kind acts you have done to your mother and aunt. I have always been wanting in such good deeds. In this account, I fear the balance is sadly against me. It is impossible not to feel for the loneliness of the husbands. You must, I think, take

[1] Particularly by Judge Smith's nephew and niece, Mr. and Mrs. Cavender.

your father. S. M—— excels Job and Moses in patience and meekness, and as his daughters seem happy, and no doubt are so, he will get well through the remainder of life."

To Mrs. Smith, Exeter, September 17, 1833. "Should you believe it, my dear Elizabeth, the house is, and has been still — no noise, or loud talk — all quiet; this must be, because I do not talk when you are absent, or there is a reformation in the kitchen. But then we are exceedingly dull, and all longing for your return to enliven us. I fancy we are rather idle. Apropos of indolence, Mr. ——, and of industry, Mrs. ——, with their son, called after dinner yesterday; it was about half after two, and I neglected to ask them to dine. I verily believe they had not — I now recollect they looked hungry. I invited them to stay all night, but they were bound for Portsmouth. Judge ——, with his son, also gave me a call, and spent half an hour, whereupon I praised his wife, which seemed to make him a little jealous. If you do not return soon, I shall be overrun with women. Two other women honored me with a call, under pretence of seeing you. I shall soon be as vain as ——. If you do not come soon, I shall lose the gift of speech altogether. It was remarked last night, at the bank, that I was quite silent. Do you spend your time pleasantly? Are you useful to your mother, and adding to your own health and strength? Then stay, and let us get along as we can. Your health is of more importance than all we. You see by my speaking of women, and not ladies, that I am retrograding, and

losing what I could ill spare. The shadow of the degrees on my dial of life, is gone backward two years; and I am as when you had compassion on me, and pitied my loneliness, and comforted me. But still I say, do not come if you are gaining health. I will forego present for future good, and especially your good. I have read Jay through, with increased delight. I would recommend it to your father. I am now in Pückler, and he grows dull, at least so it seems. I doubt whether he is trustworthy, which is no small objection to travels. I have also been looking over my business concerns, bringing up lee-way; so you see your absence, though grievous, produces some good fruits. But I would not be too rich in good things in which you are not; therefore when you can, without leaving any duty undone, come to your own husband — thank heaven."

To Mrs. Smith, December 7, 1833. "It is my duty to love and care for you, and think of you all the time, and to dream of you when asleep. All these things I have done, and I hope you will only think of me and home, in the intervals between the pleasures and enjoyments your visit must afford you. But I have not been miserable, the house is exceedingly quiet. If you do not return soon, I fear we shall all lose the gift of tongues. Eliza is all softness, and Jane as still as a mouse. If you come soon, you will have all the talk — can I state a stronger motive? I have almost finished Peck's trial, and am delighted, not with the managers, but with Meredith, a Philadelphia lawyer, and above all, with Wirt, who is truly clever and eloquent; you do

not envy me this pleasure. It is only the gleanings of the field, after harvest. But now I recollect you enjoined the reading on me. I should have had much pleasure in reading many passages to you. I have invited your usual company for tea this evening. The guests will, I am sure, miss you, and so shall I; for your duties will be awkwardly performed. I have not yet heard from Portsmouth; but my mind is made up, and nothing can disturb its quiet. Still it is very possible I may not find it so, when the news comes. I can truly say I am as much concerned for your friend's success as my own, or our own."

To Mrs. Smith, May 26, 1834. "My dearest wife: You are a dear good woman, always devising good things for your friends, and (if it were possible such a woman could have any enemies,) doing good by design, and sometimes without design. When Joel appeared, at mid-day, I was suffering marvellously under your old friend Major ——. He had begun more than twenty stories, was in the midst of them, had finished none, sometimes advancing and sometimes retreating; he had work cut out (you know he was formerly a tailor,) to last through the day. In this time of need, *enter Joel* with your letter. I seized it with real and affected joy, told the major it was from you. He took the hint, rose, and began his exit; he did not stop more than ten times before his final departure. Your letter, therefore, found me, or rather procured for me, the high felicity of relief from suffering. I was happy, very happy. I am glad its contents increased my pleasure.

Your mother is in more than usual health. L. is about house, your father in a fair way to do well. Let your next letter give me a good account of yourself, and the measure of my joys will be full, even if the major should return. I am sincerely glad you are at Dover, because I am sure my loss will be more than overpaid by the happiness you will confer on others. Tell L. to be careful of her health. It is of more value than many gardens. I shall hear from Boston and Peterborough to-morrow evening; till then adieu. Be careful of your own precious health, and while you make others happy, do not forget the happiness of my best and only friend."

To Mrs. Smith, 31st May, 1834. "My dearest wife: I have just sent to the office, and am glad to find no letter from you, — not because you do not always write well and affectionately, and afford me the greatest pleasure, but because it must give you some trouble, and I would have you at all times consult entirely your own health and happiness, and the happiness of the friends with whom you are. I would have these absences devoted to yourself and parents. I know very well you will reverse the order, and read parents and self. Well, my dearest, have it your own way. Your silence also proves that all is going on well at Dover. We are unusually good here, and the house continues very quiet. I cannot answer for the matter of economy. I find myself a little too much pressed with a better and a fuller table than I desire. I find this *damp* weather, as I always have, meriting John F——'s pronunciation. I do not go out to it, but it comes to me with a vengeance;

and Morpheus takes the occasion of your absence to treat me ill. If he is kind to you I shall forgive him. Take care, my dear wife, of your own precious health. Perhaps you may have forgot (as your niece sometimes forgot to love her enemies,) that health is a great blessing. I don't know that it would have occurred to me if Susan —— had not made me a very long visit (don't envy me,) and was so good as to remind me of it."

Judge Smith was never more alive to all the great concerns of society than at this period, and certainly his mind was never more active. "The great enemy of the mind," he said, "as to decay, is rust. Rubbing brightens, as rubbing an old brass vessel. Who can know after, that it is old? It is as bright as new — the fashion may be somewhat different." He had the rare faculty of exercising his mind on passing events, and taking a warm interest in whatever was deserving of attention, without permitting himself in any way to be drawn in so far as to disturb his equanimity. "I am," he said, "an indifferent spectator among the children of men. I take no part with or against any man. My account with the world is closed, and yet I am disposed to indulge no spleen, much less to hate mankind." This, in its large sense, which was that in which he intended it, was true. As a public man, and in connexion with public affairs, his account with the world was closed. Though things often went in a way he did not like, it gave him no anxious thoughts. Writing in 1833 to a lady, who was full of solicitude about such matters, he said, "I am not so good a patriot as you;

have felt no anxiety about the republic. I do not think well of the master or crew. If they run the ship on shoals, like my countryman I comfort myself by reflecting that I am only a passenger." That is, having done all that he could, he felt no longer any responsibility, and therefore no apprehension of evil. What a vast accumulation of unhappiness would be lifted up from the world, if his example in this respect were universal! As the destiny of mankind did not rest on him, he chose not to be borne down by its weight. To a boy very anxious about the part he was preparing for a public exhibition at the academy he said, "Do your best, but if you should not succeed, you may console yourself by the thought that possibly the cause of learning may not suffer." There is in this remark more wisdom than appears on the surface. We of this generation think more of the results of our actions than of our fidelity; and, in making ourselves answerable for that which belongs to the providence of God, are impatient because of the tardy development of the divine plan. In our vain and presumptuous efforts to accomplish the work of centuries in a day, we forget the more important but less conspicuous duties that are assigned to us.

Judge Smith always practised a strict economy. "The best motive I know of," he said, "for saving, is to have something to give." And the giving of money, without knowing or much caring how it was used, he considered a very suspicious kind of charity. He did not altogether like the modern way of doing so much through charitable associations. "I fear,"

he said, "we shall soon have so many societies to promote charity, temperance, religious instruction, &c., that we shall lose all individual concern in these benevolent objects. They will soon be managed entirely by corporations — bodies without souls. We shall retain our party feelings, and at the same time commit our benevolence to the presidents, vice-presidents, and executive committees. It would be easy to show that corporate charities will soon eat out personal almsgiving; and there can be as little doubt the sums actually given will do less good, will reach fewer deserving objects. The expenses of the administration will be more wasteful, and the selections less judicious — there will soon be corporate beggars."

The variety of subjects on which he took an interest was remarkable; and his incidental remarks had often the point and force of apophthegms. "Carry but few clothes; you can always know a foolish woman on her travels, by her wardrobe." "The way not to think too ill of the world, is not to think too well of it." "Who knows women better than shop-keepers? If I were going to choose a wife among the city young ladies, I would escort them in their shopping excursions." "Over-activity is a very high offence in the president of a college, principal in an academy or common school-master, and, above all, in a clergyman. There is, there can be, no peace in a parish cursed with such a busy-body." "We err more frequently by doing too much than too little; the latter is the better and the safer excess of the two." "It requires genius to understand genius in others." "The question is,

whether we shall govern our feelings, or be governed by them. Persevering diligence is necessary for the former; few therefore succeed." "Forced gaiety is never exhilarating; the anxious and sorrowful communicate from the countenance rather than from the tongue." "With all its faults, I like the Memoirs of R. L. Edgeworth; he lived so charmingly and so usefully with his family, so pleasantly for himself, and so instructively for them." "There can be no hurry in obtaining accurate, thorough knowledge." "Oh, that we had good preachers! I almost envy the enthusiasts who are ravished by foolish sermons."

"There is a happy contentedness which some men possess, and which is indispensable to the cheerful enjoyment of life. I am happy to believe that I was never entirely destitute of this valuable disposition of mind. I have seen some who had so much of it, that it served to damp their ardor for improvement." "My sleep last night did me good, as it doth the upright in heart." "He who acts on principle, consistently, regularly, commands esteem, and can hardly fail of success, especially if he is moderate in his desires." "They who are so cautious as to say nothing objectionable, seldom say anything good." To scholars: "Don't content yourselves with making patchwork out of the thoughts of others. Have ideas of your own. Other people's intellectual treasures are no more to you than their wealth. You may be poor in the midst of riches. Boldly march up to the fountains of knowledge as a hero does to the cannon's mouth." "I envy you your constant and full employment. This is better than a whole life

of ease and leisure. This last is the *tedium vitæ*. There is no continual feast; it is the occasional banquet which affords the most exquisite delight." "Dying exclamation of Brutus: 'O, Virtue! I sought thee as a substance, but I find thee an empty name,' virtue without religion." It having been mentioned to Judge Smith, as a remark of Dr. Channing's, that the foliage of every different tree, when agitated by the wind, produces a sound peculiar to itself, he replied, "That is a beautiful thought; I delight to see an attention to such things. A love of flowers, trees, and natural objects, in general, is a proof that all is right about the heart." "Anxiety is very unreasonable in a heathen; and I am sure it is a thousand times worse in a Christian." "Is there no vanity in saying, no man bears sorrow better than I do? not, I trust, from a want of feeling, but from principle. What is our philosophy, and, still more, our religion, good for, if they do not serve us on such occasions?" "There is trouble, '*mea virtute me involvo;*' shall we forever be found astonished at the failure of men and banks? We see only the outside of things." "To be good, learned, and happy — the first are in our power — quære as to the last." "I am clear in it, that humility is the foundation of all religion." "I have been quite unwell twice this winter. Surely it is not necessary to give an old tenant at will, like me, notice to quit. We have the offer from our Lessor of a perpetuity in a better inheritance." Repeating the words, "When shall I sleep to wake no more?" he added, in language more becoming a Christian, "When shall I wake to sleep no more?"

CHAPTER XIV.

1834 — 1835.

LECTURES ON WASHINGTON, FRANKLIN, JUDGE PARSONS — NEW ENGLAND JURISPRUDENCE.

"I HAVE the conviction," said Judge Smith, in the language of Sir Egerton Brydges, "that life is yet altogether joyous to me — perhaps more satisfactory and even more delightful than in the effervescence of youth and strength of mature manhood. My eye is as delighted with the grandeur and variety of inanimate nature, and my heart is as open to all the virtues and friendships of human society." These words might serve as a motto for the remainder of this memoir. His whole nature was never more alive, nor his faculties more vigorous or interested in a greater variety of objects. Happy in his home, his fortune and his intellectual possessions, he seemed more than ever desirous that others should participate in the blessings which a kind Providence had bestowed upon him. He exercised an enlarged hospitality. He gave away in charity usually a tenth and sometimes more than a sixth part of his income. He loved to

have the young with him, that, enjoying their society, he might at the same time amuse and instruct them. His library was always open for his friends to consult, and in the lending of books his practice corresponded with his words. "Nothing," he said, "is so offensive as locking up books. The light of no man's lamp was ever yet diminished by allowing another to kindle his by it. What man ever regretted the free use of his library to poor scholars? It would prove him altogether unworthy of such a treasure. It is very true that the free use of the library would in time wear out the books. Time without any use will, in a great degree, produce the same results. Books were made to be used, and of course worn out."

Judge Smith lectured in many different towns, and in all his lectures, whatever the subject, there was one paramount object. They were all prepared for the young, and with the earnest wish to awaken and strengthen in them the love of industry, a desire for intellectual improvement, and above all, a reverence for moral and religious principle. Those who have read the last chapter, have seen how this object entered into the first lectures that he prepared. In 1834, he delivered a lecture on the private life of Washington, and another on Franklin. They were not for the learned. He engaged in no curious historical inquiries, and brought out none of the gossiping details, with which his personal intercourse with Washington must have furnished him, and which might have given a sort of factitious interest to the performance. His purpose was too serious for that. He endeavored to

hold up to the young those great and distinguished men, and to impress upon them the principles of thought and action through which they had become great. "The private character of Washington," he said, "is the subject of my discourse. It is not my intention to speak of him as a hero — the leader of that army which carried us triumphantly through the war of the revolution, nor to treat of his civil administration, no less glorious to himself than to his country. I was favored with a near view of Washington, in his high office, during the greater part of it, and at its close. I now see him standing for the last time in the midst of the representatives of the people of the United States, making his last public address. It was a spectacle full of sublimity and grandeur. His communication was by speech, face to face, not by written message, as the less impressive usage now is. . . . . How natural that the representatives of a great people should attempt to disclose some of the emotions the occasion could not fail to awaken! . . . Of the body which made the answer, only six now remain, Gallatin, Livingston,[1] Madison,[1] Macon,[1] Jackson, and last and least, the person who now addresses you.

"But leaving the general and the statesman, it will be my endeavor to draw from the private life some useful instruction applicable to us all, and especially our young men. Maupertuis, in concluding his character of Frederic the Second, says, 'many a private man might make a great king, but where is the king

[1] Now dead.

that would make a great private man?' Washington was an exception. When you saw him in office, you would pronounce him in his proper sphere; but when you beheld him in private life, you would at once allow that office had not exalted him, still less corrupted him, as it does too many of our race."

Judge Smith then goes on to speak of Washington's modesty and humility. "I am not sure that to these he was not much indebted for all the great qualities that distinguished him from other men; for his low estimate of himself did not prevent his accepting, in urgent calls of duty, high, arduous and difficult offices, though the distrust of his abilities, and his innate modesty, always led him to retire whenever his services could be dispensed with. . . . . He made no claim to belong to the higher order of men of genius — the men who see the light of truth before it becomes manifest to the rest of mankind. Even as the sun illuminates the hills while it is yet below the horizon, the highest minds are the first to catch and reflect a light, which, without their assistance, must in time be visible to those who lie far beneath them. Light did not come to Washington sooner than to others, but he made a better use of it when it did come. He walked by it and he made the most of it, whilst too many others, in the midst of the light shed by genius, walk in darkness. It was wisdom accessible to all, that wisdom which dwells with prudence, not genius, which is too apt to dwell with imprudence, that promoted Washington and brought him to honor. . . . . That same prudence and modesty kept his head from becoming

giddy in the highest office, whilst his superiors in age and dignity occupied lower grades. He maintained at all times a strict watch over himself, as strict as over his men, to see that both acted well their several parts.

"The same modesty and humility prevented his putting himself in the way of receiving those flattering attentions, which are so eagerly coveted by the vulgar great. When he put on the country gentleman, he put off the general and commander-in-chief. It was not his practice to fight his battles over again, and entertain his company with a recital of the great scenes in which he had been the principal actor. He rarely spoke of the war, and still more rarely of himself. His talk was of agriculture and rural affairs, of what would best improve the face of the country, its facilities of intercourse, the understanding, the morals and manners of its inhabitants. A few years afterwards, when he was called to enter upon the untried office and duties assigned him by the unanimous voice of the nation, he did not suffer this transcendent mark of public approbation to disturb the just balance of his modest mind. Like a wise and good man, as well as humble Christian, his first official act was 'to supplicate that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, to enable him to execute with success the functions allotted to his charge;' and he quitted office with the same modest and humble opinion of himself with which he entered upon it."

Next the lecturer speaks of Washington's coolness

and firmness — "Not the courage which is so common a virtue in military men as to be scarcely deserving of praise. . . . When Washington was once satisfied which way the path of duty pointed, he did not hesitate a moment longer, he boldly marched to his object. He was not hasty in forming his resolutions. He was cool and collected. He was the very opposite of rash. It was his habit from early life and in every business of importance, to open his mind to all the lights bearing on the question, and impartially to consider them, and then decide, and firmly adhere to that decision, till his judgment was convinced of its error. He did not waver — halt between two opinions. He showed his modesty and diffidence in forming opinions, and his inflexible firmness in carrying his well-formed judgments into execution. There is a striking proof of his forbearance and fortitude that deserves to be mentioned. I well remember that early in the revolutionary war, Washington was censured for what was called the evacuating and retreating system of his military operations, and some went so far as to impute it to want of courage and spirit. You may be sure he felt, strongly felt, the injustice and cruelty of the charge. It was in his power to have vindicated himself at any moment by showing the true state of his army, its actual numbers, far less than supposed, its discipline, or rather its want of discipline, its equipments wholly unfit for offensive operations. Among his wants were even arms and ammunition. But his duty to his country, devotion to the cause, required the concealment of all these things from his countrymen, that the enemy might

not know them. And Washington was magnanimous enough patiently to suffer reproaches in what most nearly concerns a soldier's honor, for the safety and well-being of his country. Time, and even his enemies, now do him that justice which his countrymen then denied him." Washington made no pretensions to extraordinary courage. "A report was at one time circulated, to magnify his courage, that he had been heard to say, 'that he knew no music so pleasing as the whistling of bullets.' When asked if he ever said so, he replied, 'If I ever did, I must have been a very young man.' I doubt much whether any man that ever heard this species of music would incline to say, '*da capo*, let us have that tune over again.'

"I can by no means agree with the modest Washington in his estimate of himself, that he inherited from nature inferior endowments. They were highly respectable, and of the kind that fitted him to be a leader. Washington's coadjutors might have applied to him the injunction of the apostle Eliot to Dr. Increase Mather, a century before. 'Brother,' said the venerable man, 'the Lord has blessed you with a leading spirit, as he did Mr. Mitchell, who has gone unto him. I pray, brother, lead us in our exercises — do for us all the good you can.'

"Washington was endued with a wonderful sagacity, in judging correctly of others, and was particularly successful in drawing forth their talents to the best advantage for the public, and, I verily believe, never in all his life called to office an unqualified person, unless where, after the most impartial scru-

tiny, he was himself deceived. He selected the best, the public good his guide and aim. As to dismissing a qualified man from office, that he might fill his place with one less qualified, to gratify any selfish motive, it was just as impossible as that he should have taken a bribe from the enemy, or sold his country for thirty pieces of silver.

"His means of education, and his early stock of acquired knowledge, what is called learning, could not have been great. But his habits of inquiry, from early life to its close, were remarkable. He was never satisfied with investigating. He had the calmness and temper of mind best fitted for deliberation. Some men cannot deliberate; they act, honestly if you will, but from impulse, and sometimes, alas! that impulse given by cunning, interested and designing, and oftentimes, the meanest and worst of men. To conjecture in any given case, what such a statesman will do, you must first calculate the impelling force, or the influence he is under. Washington acted from himself.

"I am inclined to think that, on a careful analysis of the mind and heart of Washington, sound judgment and sound discretion were the most remarkable. He was discreet, and his conduct regulated by principle in early life, at a time when youth is almost privileged to be rash. I incline, also, to the opinion, that judgment and prudence in youth are not so uncommon as is generally supposed. Edmund Burke used to say, that those who did not possess prudence early, were apt to miss it late; and if I may be pardoned the seeming vanity of saying I agree with Ed-

mund Burke, I would say my experience and observation confirm the remark.

"It is impossible to know much of Washington's public or private life, and be ignorant that his passions were naturally strong, and that there was a quickness in his sensibility to anything apparently offensive, and upon a few occasions it required the full force of his strong mind and good principles, early implanted and carefully cultivated, to give him the mastery over himself. Such victories were, perhaps, as difficult as any he achieved. Till he had conquered himself, he never could hope to obtain a strong victory over his fellow-men. No man more largely shared their confidence in every situation in life. Who can sufficiently estimate the value, to his country, of Washington's name? That we should pass safely through the war of the revolution, that the constitution of the United States should be adopted, that our neutrality, amid the terrible scenes of the French revolution, should be maintained, and that we should advance so rapidly to greatness and strength — who can say that any or all these great events would have happened without a Washington? Who believes they could have happened, if Washington's influence had been cast into the opposite scale?

"To the small number of our race, who seem to be born, not for themselves but for their country, and who fulfil their destiny by a succession of great and good actions, all tending to the best good of the country that gave them birth, Washington's name must now be added. He, and I trust his country,

are safe. His cause has been tried, verdict given, and that judgment passed which is never to be reversed. . . . .

" I have presented before you some of the distinguishing traits of Washington ; but his character is not the result of any one or more of them, taken singly and alone. Other men may have possessed equal modesty and humility, as much valor and courage, fortitude, patriotism, greater endowments from nature, and a far more finished and complete education, equal prudence and discretion, equal mastery over their passions, equal disinterestedness, as little vanity, and as great devotion of heart to their Maker and of life to their country. But who has united all these qualities of the head and heart in due measure and proportion, so as to make one complete and almost perfect whole ? The virtues of other men are like scattered stars, appearing here and there on the face of the heavens. But Washington's, the galaxy or milky way, a great assemblage of stars, exhibiting an uninterrupted brightness. In his character is seen, not so much the display of any one virtue, as the possession of them all united — the most difficult as well as the more easy ; the good and the useful, presiding, animating, governing, and sometimes restraining the rest. For our very virtues sometimes require the curb of prudence and religion.

" How was it that a man like Washington, with a genius not superior to thousands of his countrymen, with an education below the average of educated men in that early day, who had been hardly out of

his native province, and while in it, for several successive years, encountering the hard service and perils of Indian warfare — an unpromising field of education — without a master to teach him the art of war, devoted to agriculture, and the every-day duties of hospitality and good-neighborhood — how is it that such a man could fill so great a space, do so much good, perform such difficult and arduous duties, such as no other man in any age or country has ever yet done? I do not profess to be able to resolve these questions entirely to my own satisfaction; they are too hard for me, and I am constrained to repeat, what I publicly said thirty-four years ago, on the occasion of his death: 'When the Almighty, in his Providence, intends the accomplishment of some great and glorious work upon earth, he raises up fit instruments among the children of men to accomplish his ends; and surely this was an occasion worthy a divine interposition.'"

I am aware that there is little that is new in these remarks; but they cannot be too often or too earnestly enforced. The whole lecture, as it was delivered, seemed like a satire on the politics of the day; and indeed what could more severely rebuke the manœuvering partisans of the times, than the character and example of Washington? "For he was honest and sincere in politics, where many men, God knows why, think they may accommodate their political opinions to their interests."

"Suppose the law of our nature should be repealed, and this great and good man should be suffered to rise from the grave, and revisit that city,

called by his name, and the country once so dear to his heart. To which of the great parties would he attach himself? All pretend to be his disciples, and to walk in his footsteps. It is dangerous to pursue the suggestion. Here let me stop. Each of my hearers may safely and silently furnish an answer for himself."

In this lecture Judge Smith related an incident that occurred while he resided in Philadelphia, during Washington's presidency. "An Italian adventurer, with some skill in sculpture and the fine arts, waited on Washington and Hamilton, requesting each to sit for a cast or marble bust, and for permission to set them up in the halls of their respective dwellings. It was distinctly understood by all the parties, that it was wholly the affair of the sculptor, and as a mean of recommending his art, and obtaining employment. The busts were finished and set up, and seen by all visiters at these great houses, and had their share of admiration. All this was very well and as it should be; but it occurred to the wily Italian that, with his stock of impudence, he could make these same busts the occasion of spunging some money out of these great men. He first applied to Washington, and demanded two hundred dollars, as a moderate price for the work he had done for him. Washington considered it as a gross imposition, and rejected the claim, telling the artist he might remove the bust at any moment he pleased. Hamilton, viewing the matter in the same light, nevertheless borrowed the money and satisfied the claim."

As this anecdote shows Hamilton only in his weakness, it is but an act of justice to add Judge Smith's full and deliberate opinion of one whom, in spite of his infirmities, he was accustomed to speak of as a most upright, disinterested man, and the ablest of all the statesmen who took a part in forming the constitution of the United States. He believed that there was no one on whom, whether in civil or military affairs, Washington depended so much; and always spoke of him as the life and soul of Washington's administration. In a letter to John C. Hamilton, 14th April, 1836, Judge Smith said, and the same views he often expressed in conversation, — "Your father was the least vindictive — no, that is not the proper word — he was the most magnanimous of men, and the last to press a vanquished enemy. When attacked by calumny, or in any other way, he instinctively faced the foe, and was sure to throw down his weapons of defence when the purity and honesty of his character were proved or admitted. What has been said of Fox (there was a strong resemblance in mind and heart between the two men,) eminently belonged to your father, that no human being was ever more free from the taint of malignity, vanity or falsehood. No man had more ardent and affectionate friends than both. Both statesmen (a praise that does not belong to the class,) were made to be loved. Your father carried frankness and openness perhaps to excess. He scorned all artifice, wore no disguise, and was by far the least selfish of all the children of men I ever knew. He was, indeed, all for the public, and nothing for himself. I

hope you will be able to delineate his character with the utmost exactness, stating it just as it was. Anything like exaggeration would be an equal offence against duty and good taste. And yet this is a common fault among biographers. But you have no common character to deal with. Your difficulty will not be in the lack of materials, but in their abundance and richness.

"You must, I think, depend almost entirely on the written remains of the time. I have been sensibly struck, in looking over the ayes and noes on the resolutions of censure in 1793, to find myself the only living member who voted against the resolutions. But, by the way, I have not heard of Benson's death. Two only, I believe, Macon and Madison, remain of the little adverse squadron, in number twelve — the same number that voted against Washington's administration on the answer of the house to his last speech. They would not even pay a civil compliment at parting. There was a propriety in thus coupling the two names of Washington and Hamilton. It was their good fortune to enable each other to do the most good. Their friends and enemies were generally the same; the former had the greater number of false friends, and the latter the most devoted.

"The length in point of time and the busy life I have led, do not allow me the pleasure of communicating things which in any degree can aid your laudable and pious design. I can only heartily wish you success.

"I shall never forget the first time I saw your

father, then a young man. It was at the camp on or near the Hudson, I think in 1781. He seemed a visiter. I spent the evening in the same public house, unknowing and unknown, about twenty-one. The company seemed highly respectable, and the conversation turned on the topics of the day. I was struck with the conversation talents, ready and entertaining, and with the superior reasoning powers of one who seemed to take the lead; it exceeded anything I had before seen, and even my conceptions. When the company retired, on inquiry I found it was Col. Hamilton I admired so much."

It so happened that Judge Smith gave his lecture on Washington at Lowell, at the same time that Professor Silliman was lecturing there. As he was going up the steps of the hotel, after his return from the lyceum, Mr. Silliman, who followed immediately after, said with earnestness, "Judge Smith, every line of your lecture went directly to my heart." "It could not have gone to a better place," was the reply, as prompt as it was graceful.

Imperfect and disconnected as these extracts from the lecture on Washington have been, our sketch of that on Franklin must be still more so. "Every act," he said, "and every saying of this great man is a text upon which a good practical discourse might be written." "The secret of his success was that he was ever awake, and suffered no opportunity of improvement to escape him. At the same time he did not neglect his business and calling." "When you look at Franklin, at sixty and seventy, and find him standing before kings, where Solomon says the

diligent may hope to stand, and, what is far more, the intimate and valued associate of patriots and sages, the learned philosopher and the able statesman, you wonder and admire. Is this the poor, friendless, illiterate printer's boy, who had no one to take him by the hand and lead him up this difficult ascent, to this proud eminence? But your wonder ceases, when you trace his successive steps in the journey of life. You find there is nothing miraculous in the case; all is natural. To the bounty of Heaven he was indebted for a sound mind in a sound body. The rest, under Providence, was all his own."

"On the subject of religion, I would by no means propose Franklin as a model for young or old. His notions were crude, and by no means well-considered. His religious notions evidently grew better as he grew older. He seems, in more than one place in his autobiography, to insinuate that free thinking had produced no good fruits in himself, and had worked badly in others whom he had taken some pains to indoctrinate. He says the great uncertainty he found in metaphysical reasonings disgusted him, and he quitted that kind of reading and study for others more useful. He was wise in this; it might have ruined him."

"As an editor, Franklin carefully excluded all libelling and personal abuse, which he observes, of late years (more than half a century ago) has become so disgraceful to our country. What would he think if he lived now, when we have calumny without wit, served up in a style as coarse as the matter. Franklin was a scholar, wrote pure, elegant English, and

took an active, decent part in the politics of the day. His paper now would receive no encouragement, I fear. Does this prove that we have made advances in good taste and in good morals? Perhaps, however, we are unjust when we charge the whole evil to the bad taste and wicked propensities of the editor and publisher. If there were no receivers of stolen goods, there would be no thieves; so if no listening ears for calumny and slander, we should have fewer lying tongues and poisonous pens."

"Franklin mentions, in his autobiography, having narrowly escaped, soon after his apprenticeship commenced, two great evils; the first, that of being a poet. He thinks he would have made a very indifferent one, and I see no reason to differ from him in this opinion. The second was a taste for polemical divinity, disputing about religion. It is not easy to conceive of a worse aliment for a young, susceptible and imaginative mind; feeding on husks to the body, is nothing compared to it."

But we have not room even for short extracts like these. The lecturer earnestly commends to all, the careful study of Franklin's Life and Works, as he had before with more earnestness recommended the Life and Correspondence of Washington.[1] The lecture closes with an account of the famous Hutchinson papers, which produced such an excitement here and in England. Hutchinson and Oliver, it will be remembered, had, in private letters, been

[1] By Mr. Sparks, of which a part only had then, (1835,) been published.

urging the British ministry to adopt stronger measures for the subjection of the colonies. These letters came into Franklin's possession the latter part of 1772, and were by him forwarded immediately to Mr. Cushing, speaker of the Massachusetts assembly; but with a strict injunction, conformably with his engagement with the person from whom he received them, whose name he was not at liberty to disclose, that the letters should not be printed, nor any copies taken, but merely shown to some particular persons for their satisfaction only. Judge Smith, after giving some account of these papers, and of the insult to Franklin, the 29th of January, 1774, says; "I was then a boy at school, but well remember the effect it produced on the public mind. I have no doubt it served to brace up many a doubting mind, and nerve many an arm for the combat which quickly followed." The whole account is too long to be copied here; but the closing remarks on the conduct of Dr. Williamson, who boasted of having procured the papers for Franklin, and of the patriots of Massachusetts, for the use they made of them, deserve to be borne in mind by all public men. "There are circumstances," he says, "which would lead us to doubt the accuracy of Dr. Williamson's story. I was well and intimately acquainted with him, and have no doubt that he was capable of doing the act as related. But be this as it may, I do not find myself quite able to approve the act. According to his own account, he practised a deception, and the difference between telling a lie and communicating or acting one, is hardly worth regarding. Indeed, the lie direct is the more manly

of the two; deception in any form is not a high-minded vice. For the same reason, the conduct of the late Governor Hancock and some others, in this transaction, as it has been stated, seems far from commendable. You recollect the letters were forwarded by Dr. Franklin, in strict confidence that no copies should be taken, yet they were copied and printed. It was thought the public good required it. I believe the public good requires nothing which is not honest and honorable. When the letters were read in the house, all felt the desire to see them in print; but how to evade the conditions, not to take copies or to print, was the problem to be solved. Three courses lay before them; first, strictly adhere to the terms; second, boldly violate them, and publish; third, evade the restrictions by some ingenious trick. The latter course was adopted. The restriction as to taking copies, was predicated, it was said, on the idea that no copies had been taken anywhere. Mr. Hancock rises in his seat and produces copies of the letters, and one account says, declaring that they had been sent to him from England; another, that it was so stated by others. Hancock's copies were doubtless taken here, and to be used as they were in fact used. All now agreed that the restriction was virtually repealed, and the condition no longer binding; the letters were already public, and there was no harm in adding a little to the publicity. The trick satisfied the scruples of all, and the newspapers had the letters.

"I do not say that all concerned intended to act a base part; I know that with honest politicians, if

there be now any such class, strong party feeling, vehement party zeal, are apt to weaken the force of conscience, and counteract the sense of honor, or at least to pervert the judgment for a while, and lead it to approve the doctrine, that the end sanctifies the means. And we have sometimes had the pain to see a man applauded for a political manœuvre, which in truth ought to have consigned his name to infamy and dishonor. On the occasion which has called for, and I hope justified these remarks, an honest man, and especially if he happened at the same time to be a Christian, would have said, 'It would seem, in my judgment, useful to publish these letters, for the good it will do. Hutchinson and Oliver have justly merited our reprobation, but it cannot be done without a breach of confidence; it must not, therefore, be done. Heaven, if it intends to save us, will send deliverance from some other quarter. If we perish, we perish. If we lose our country and our freedom, let us at least preserve our faith and our honor.' "

The lectures which cost Judge Smith the most labor, and which would have been most likely to survive, as a lasting monument of his ability and learning, were never completed, nor indeed brought to such a state of forwardness as to be of any service to others. They were on the jurisprudence of New England, a subject in which he had always been interested, and to which, as appears from some of his papers, he had paid particular attention some years before he left the practice of his profession, it being, as he said in his letter to Mr. Livingston, his

"knitting-work to put down the New England law, where we have allowed it to take the place of the English." In 1816 he said, "I am inspired with zeal to examine New England histories, memoirs, records, with a view to her jurisprudence." He began to prepare them in 1836, and left behind many sheets of notes and references; but only a few pages were written out in full.

"I propose," he said, "to make some remarks on the science of jurisprudence. I shall confine my observations to the laws of New England, as she was before the separation from Great Britain; and here Massachusetts will be chiefly regarded. She is justly entitled to this distinction, on account of the priority of her settlement, and still more on account of the superior character of her first and present inhabitants. I shall hope to be pardoned, if I indulge freely in observations and remarks not strictly, perhaps, connected with the New England jurisprudence. This science embraces the constitution, as well as the laws of the country or place, and, limited to New England, it comprehends the nature of her connexion with, and dependence on, the parent state. The common law she brought with her, as her birthright; and the statutes and ordinances she framed for herself. Restricted to the narrowest limits, the subject is an exceeding broad one, almost entirely new, and would call for more time, more study, and far more talents than I possess.

"It is impossible here not to be reminded of the loss, an irreparable one it must be felt by all who would prosecute these inquiries, in the death of Mr.

Parsons. He died in 1813. He had made considerable progress in his studies before the war with Great Britain. He was highly favored in a most able instructer, and at his death was certainly better skilled in the New England law, than any other man on either side the Atlantic. It is much to be regretted that he left behind him so little of the great stores of the law peculiar to New England, which his diligent and discriminating mind had been collecting and digesting for nearly half a century. It was my good fortune to become acquainted with this truly great man and learned lawyer at the time I commenced my law studies; I cannot suffer this occasion to pass, without expressing my heartfelt acknowledgments of his kindness. He was ever ready to assist such as manifested a desire for instruction. This part of his character, I believe, has not had that justice done to it which, in an eminent degree, it deserved. I will not say that Theophilus Parsons was the greatest lawyer that ever lived; but I risk nothing in saying that he knew more of the New England law, which existed while we were British colonies, than any other man that has lived, or perhaps that ever shall live. Some of his learning has been preserved in the reports; but much the greater part of his, and nearly all that of the lawyers and judges that went before him, is now irretrievably lost to the community.

"It is a great error to suppose the New England common law, properly so called, from the advances made in all branches of knowledge, is of no importance in New England at this day. For what is the

common law of which we speak? It is made just as the English common law was made; a collection of the general customs and usages of the community; maxims, principles, rules of action, founded in reason, and found suitable to that first condition of society; if not created by the wisest and most favored, sanctioned and approved by them. Here, every member of society is a legislator; every maxim, which by long usage acquires the force of law, must have been stated, opposed, defended, adopted by rulers and judges, slowly and at first timidly, but so acceptable that all approve. If the custom be of a more doubtful class, again debated, criticised, denied, but finally confirmed and established. These principles, after all, may not be wise and salutary maxims; but they have all the wisdom that the people of all classes (every man having precisely the weight and influence he deserves,) can give them. Farther advances in knowledge and experience may demonstrate their unfitness and inutility; then they will be modified, and silently changed. The legislature can abrogate this law, as they can the rules of their own making. But it would be well for the people if they would first take the trouble to understand it. No man acquainted with the common law can look into our statute-book, and not see that the framers of the statutes, in many cases, were ignorant that the common law contained precisely the same provision; and in many cases, a provision different and better adapted to the wants of society. The new law must be repealed at the next session, because not congenial with the manners, habits, sentiments, feelings and wants of society."

May not what Judge Smith has here said of Judge Parsons's knowledge of the New England law, be applied now to himself? It is one of the melancholy thoughts, connected with the death of such men, that they carry with them so much knowledge of a kind that cannot be restored. Belonging to a period reaching so far back, and growing up under influences which never can exist again, they acquired, almost without an effort, in the study and practice of their profession, information which no research, after they are gone, can gain with anything of the same full understanding.

CHAPTER XV.

1835 — 1838.

JOURNEY TO THE SOUTH AND WEST — LETTERS — ORPHAN CHILD — INTERCOURSE WITH CHILDREN — WIT.

Judge Smith's occupation at home was much the same as it had been for several years. He saw more company and had in his own house more variety than at any time before. In 1833, he had taken William's daughter, then eight or nine years old, into his family. Besides her, he had usually in his family another little girl, a niece of Mrs. Smith's; and generally some young lady still farther advanced, whom both he and his wife took great pleasure in helping forward in her education. There was also Joel Furber, of whose short life a sketch has already been given. These young people, of course, attracted others of their own age. There were few houses, in which were to be found more of the life and merriment of youth, and the youngest among them all, he who certainly contributed most to their diversion, was the white-headed old man, who had seen the snows of nearly fourscore

winters, and who, more than forty years before, had been not unworthily associated with the eminent men of the nation. Usually, when the old man goes out, a restraint is taken off; but it was not so there. The loudest peals of laughter were an evidence of his presence; and during his absence it was felt that no small part of the animation of the house was gone.

To Mrs. Smith. "Boston, Jan. 3, 1836. I have been to the theatre two nights. 'It 's a lie.' It is not, but sober truth. At the first[1] I was the principal actor; at the second, called the Tremont Theatre, Mrs. Wood (the late Lady Lenox,) as Amina in La Somnambula, — I was charmed. Everybody says I grow younger, and I partly believe it; for no opera ever pleased me more. . . . No man can be in Boston without thinking of money. Boston grows grander and grander. It increases in everything but humility. I verily think, at least, hope, my stock will enlarge. . . . I have dissipated as little as possible; but this is a tempting place, and I must quit it. I must overcome temptation in Sterne's method, by running away. You may expect me Thursday, and loving home better than ever, and chiefly its principal charm. Apropos of wives, ——— is soft and gentle to his good wife. He seems almost a new man. How useful sorrow is in this world of ours! May you have none of it. Strange conclusion from my premises. Man is a strange creature in reasoning as well as in going to theatres."

[1] The Odeon, formerly the Federal-street Theatre, where he had been giving a lecture.

To Mrs. Smith. "Exeter, April 19, 1836. 'On looking back for thirty years, I see too many faults in my own life to be mindful of the faults against me.' Now, if you do not apply this to me, it will serve to convince me that I am not humble enough. Truly, it is going a little beyond me. I see some faults of my own in the retrospect, but some also in my friends, a very few excepted. Sir James Mackintosh, too, goes beyond me when he says, '* * * has a distaste for me. I think the worse of no one for such a feeling. I often feel a distaste for myself. Quære — should I esteem my own character in another person?' Are you, my dear wife, as good and as humble as Sir J. M.?

"You know we did not greatly admire M.'s Life of Sir Thomas More. M.'s son says, 'He wrote it *con amore*,' and has produced one of the most pleasing and instructive pieces of biography in the English language. There are few works in which the moral ends of biography are better answered, or from which the reader rises more pleased and improved.' If the young fellow of Oxford is right, you and I must resign the chair of criticism. Are we too fastidious?

"You perceive this is the anniversary of Lexington battle — sixty-one years ago. My remembrance of the feelings of the time, and even the state of the weather — the beautiful and forward season — is extremely vivid. All this proves two facts; first, that I am a great patriot, and, secondly, a close observer of nature, and, I can add with still greater truth, a great admirer of you, though you can boast of little more than half the years of this by-gone event.

"I don't know how it is, Elizabeth; but I am more regardful of health when you are absent; I am more abstemious and take more exercise, and yet I would not have you stay away on this account, unless you will engage to do likewise."

"Wednesday, 6, A. M. Up at 5 — have not strutted, but swept my hour on the stage — ventilated the room, and am ready to say good morning to you on your couch — am about to finish Sir James.

"I enjoy Sir James the less for your absence. Your interruptions serve only to enhance the pleasure. What is the reason that there are so few books, which please me so well at the end as at the beginning? Is it that the *author* tires?"

To Mrs. Smith. "Saturday noon, April 23. My dear Elizabeth: Mrs. W. says, 'Write to Mrs. S.,' and *you* know how readily I obey commands of your sex. It is my delight to do their will. I was cheered, an hour ago, on finding my door open, and *enter. Mrs. Walker.* I have read two or three chapters to her out of Sir E. Brydges' autobiography; very entertaining. She has consented to dine with me, so that you see I am in a fair way to be happy. I hope that the only cause which can prevent your being so, does not exist — the suffering of your friends.

"It is a fortunate thing for me that most things amuse me. Mr. ——— entered last evening with a groan at the hall door, and gave me an hour in harmony therewith, and left me very happy. . . . I find Sir E. B.'s book entertaining; am glad I bought it. This is just the time I need such refreshment. I am

in the midst of examining a knotty law case. It does not trouble me; but it is well to have good intervals. I see a storm a brewing, but value it not. Mrs. W., to whom I have just read so far, says, 'What spirits you have!' Why not? Heaven has been good to me; why should I not be cheerful and happy? To know that you are so, would add something to the mass."

In the summer of 1836, Judge Smith, with his wife and Miss ———, made a journey, by way of Washington and the Virginia Springs, to Kentucky and Ohio. "At Washington," he said in a letter to his friend and neighbor, Dr. Benjamin Abbot, "I saw a good deal of the two houses of congress. The senate answered my expectation; but I. H. had not then quit. I was made acquainted, as far as the time would allow, with most of the members. I must say, the house of representatives fell below my expectations, which certainly were not high. A vast number of the members have the *cacoethes loquendi* the natural way. I am not an enemy to good speeches; the most of those I heard were of an inferior quality, and never did I see so little attention. Indeed, there could not be said to be any hearer except myself, and, if you will pardon a bull, I could not hear. This state of things must end in some way. B.'s dumb legislature is a thousand times to be preferred. I think, just at this time, the house is not in favor with anybody. I have not seen their friends, if they have any.

"The country is grand; but the government not so good as the people."

To J. H. Morison, Washington, 23d May, 1836. "I am bound for the capitol. It is said there is to be a flourish of trumpets this morning in the senate — the trumpeter, Mr. Preston, of South Carolina, and the subject relating to the independence of Texas, now that she has conquered Santa Anna. This is believed this morning. Surely the age of miracles has not passed away. She will soon be admitted into the union. What, think you, will be the influence of New England among forty states, in 1856? Take away Webster and one or two others, and what is her influence now?"

May 25. "I have been twice to the president's — like him. He cannot reason — had an argument upon instructions. He is all wrong — holds to the Virginia doctrine — is unconvinceable. *Probatum est*; [for] my arguments failed."

Judge Smith was pleased with the attentions he received from the prominent men at Washington; but the most gratifying incident in his journey was a visit to Mr. Madison. When in congress together, and afterwards through the active part of their political lives, they had taken different sides, and were strongly opposed to each other. For a time, at the close of Washington's, and the commencement of Adams's administration, their political feelings were such, that there was no personal intercourse between them. But in the latter part of his life, Judge Smith always spoke of Mr. Madison as a man of great modesty, learning, ability and moral worth. He believed that Mr. Madison had been at one time too much under the influence of Mr. Jefferson, whom he never

ceased to consider as an able, but crafty, visionary, unscrupulous politician. They had not met for nearly forty years.

At Orange court-house, Saturday, May 28, "After much difficulty procured horse-cart, two dray horses, passenger and driver, each sitting on a kitchen chair, to carry me over the road to Charlottesville, four miles, and then one mile to Mr. Madison's, — passed through gate, wheat and rye each side, to front of lawn — house showy — grand pillars in projection — introduced myself to Mr. Todd, Mrs. M.'s son. He said his mother would be glad to see me, and so it proved. She gave me a friendly and hearty welcome. We went back forty years; she remembered me as much as I did her. Mr. M. had been very ill — too much so to see company, but said [he] would see me — found him on couch and much as Mr. V. B. had described him to me — no body — all soul — powers of mind good — memory — astonished to find him so much like forty-five years ago in the tones of his voice, though more feeble — turn of expression — talked well — said, glad to see me — he and Mrs. M. had always noted the newspaper accounts of me, and had the kindest feelings — had always considered me as acting from principle, and therefore always cherished towards me the first kind and friendly feelings. I frequently proposed to withdraw, but he expressed a desire to detain me — wished to hear me talk. I reminded him of our first acquaintance, when [I] was his scholar, courting his conversations, and thanking for his kindness. Though he does not talk politics, he expresses opinions on

political subjects and men, but with the caution and mildness always natural to him.

"They urged me to stay to dinner — three — but I excused myself, and took leave after two hours. He desired his respects to Mrs. S., and regretted, as did Mrs. M., she could not come. . . . . He spoke highly of Mr. W. and Clay."

Mrs. Smith, in her journal, adds to these minutes, which were hastily taken on the journey; "Judge Smith returned delighted with his call — found Mrs. Madison still handsome, hospitable and elegant, and Mr. M., though much emaciated, weak, sick and lying on a couch, still all himself in memory and mind. J. S. spoke of the Lyceum lectures he had been giving; Mr. M. intimated that they would not only be useful to those who heard them; but likewise serve as a pabulum to his own mind. He was so thoughtful as to offer letters of introduction to Mr. Levy, the present possessor of Mr. Jefferson's Monticello, and to Professor Tucker of the university of Virginia. These letters were written by Colonel Todd, and then brought to him and received his approbation."

From Judge Smith's Diary, 9th of June. "A few miles after starting, we found ourselves stuck fast in a slough on the side of a hill. The men passengers got out and did what they could. Mr. H. escorted the ladies a mile or more to the post-office. I remained much exhausted and sick in the stage. It started and in a very few rods capsized, and I was buried in the ruins, considerably bruised in my left shoulder and head. I was soon dug out, and ac-

quired much renown for my silence and patience, two virtues as doubtful as any I boast of."

To Mrs. Walker. "White Sulphur Springs, Greenbrier county, Virginia, June 16, 1836. My dearest Sarah: You were always dear, and now in the midst of the Alleghanies are dearer than ever. . . . . The higher we ascend, the better we love one another. So be it; for this is the greatest earthly good. Did I inform you at Washington, that, by the advice of Mr. Clay and other wise men, we had abandoned the Mississippi. I limited our tour to Lexington, Frankfort, Louisville and Indiana, returning through Ohio.

"I expect little from the waters of these famous springs; but the air is delightful in these regions, and the exercise a little more than we could desire. I cannot describe the roads better than by saying, it has rained the last twenty days, and our way, which lies over rocky hills and mountains, is the passage for the torrent — no bridges — the soil (in all not mountain) is red clay, and might now be moulded into bricks without any change of color. Our team can neither draw us up the mountains, nor out of the sloughs; but the views are grand — everything new and sublime. We do not regret our fatigues — are always ready to encounter fresh ones. We are constantly making new and often agreeable acquaintances, and are laying up food 'for many years to come.' How like this is to the language of the man that built the greater barns! The conclusion must apply almost literally to some of us; but I hope not to all. I wish you were with us to help us to enjoy. How it

would multiply all our pleasures! . . . . I have no painful anxieties about home, not even about our friends in old Exeter; they are all safe under the keeping of the great and good Keeper."

In passing through Virginia, Judge Smith's attention was of course often called to the subject of slavery. "Met Mr. P., of Georgia. He is right on the slave question, — says they are well treated and happy, and better every way than our New England lower order, and as capable as whites of intellectual cultivation. Still he is an enemy of slavery, and more so than the New England men, who come from the north and work them harder than the natives — wishes the New England abolitionists would point out a cure for the evil."

From a letter to Dr. Abbot. "Slavery here assumes its most favorable aspect. I do not say it is charming and delightful, but it is extremely mild. I have heard many Virginians regret that Dr. Channing could not spend a year in the ancient dominion. They admire the man, but not his book on slavery. I agree with them in both." Dr. Channing had spent a year in the "ancient dominion," and remembered all his life the kindness which he had received from slaveholders; but neither this, nor the mild treatment of the slaves, could close his eyes to the monstrous injustice of buying and selling human beings who had been guilty of no crime.

Judge Smith returned from his journey in good health. "I cannot but think," he said, "that I have gained some knowledge in my tour, which, if it do not profit others, will increase my own enjoyments.

This is selfish; but does any one wonder that old men are so? The world are much disposed to consider them as already out of it."

Private letters are almost the only memorials of the next year.

To Miss Lowe. "Exeter, August 1, 1836. Your letter, my dear Mary, was a very good one, both in matter and manner. I engage, if you persevere, that you will soon be among the best letter writers. But care and pains are indispensable. I know these are not pleasant to a girl just entered her teens; but I know, also, that the fruits are excellent. '*Deus ipse haud facilem esse viam voluit*' — you are a Latin scholar, you know. Take my word for it, my dear Mary, you will in due time have your reward. I take a great interest in your success in life, and especially at this period, when you are forming a character, which may last as long as you last — longer than I shall live to witness it. I am sure you have the capabilities, and need nothing but your own exertions. At your time of life I made many mistakes, and wasted much time, but idleness and inattention were not among the number of my youthful errors. I was happy in a daughter, who was in these things all I desired. I know full well the import of the words, when I say that it is in your power to make your parents exceedingly happy, by merely making a good use of your time and of your talents, which are very good; but they will avail you nothing without cultivation. Your heart is also, humanly speaking, good; but the best mind and the best heart will prove no blessing, unless you do your part. I do not mean

to flatter you, Mary, but rather to encourage you in the right improvement of your time and talents. The path of life is not all strewed with roses; there are thorns and discouragements and sacrifices to be made, but there is also abundance of pleasures to be enjoyed — great and enduring pleasures. I sincerely wish you a full share of these."

To Miss Ellen Smith. "Exeter, November 3, 1836, Thursday evening. I was delighted to find, by your letter, that your father was well, and required no waiting on. It has always been my opinion, and experience has served to confirm it, that old people are naturally (I hope not necessarily) disagreeable. Everybody that can, shuns them; those who owe them duties must pay them. But surely what is done from a sense of obligation must be infinitely less agreeable to the receiver, than what flows from love and the kindly affections. How strong, then, the motives not to be over-exacting, and to draw as little as possible on the fund of filial duty, but rather to deserve more than they are willing to receive even from children!

"Providence has wisely ordered, that old people should have abundant leisure to make themselves amiable. They have little else to do. I have, besides, little doubt that the *bienseances* as well as the moral affections are cultivable, that any man may grow in the love-inspiring virtues, as well as in the moral.

"It gave me great pleasure to see that your good father's bodily and mental powers were so very good. I can hardly give him credit for sincerity in the esti-

mate he puts upon them. This over-low estimate — not very common with the Smiths — cannot surely have been intended as an apology for indolence, making no efforts to improve! Human nature is said to be too prone to indulgence. Age, then, may be suspected. But whatever our powers now may be, they surely will diminish by *non user*; such is the order of Providence. In all this, I must be understood as addressing you, who I hope will one day be old. It is true you are very well now, and I love you dearly, but at the same time I have no objection to your being still better, and at finding myself obliged to love and esteem you still more.

"I am quite well, and hope you will keep me so by writing us often; and when we are tired of that, visiting us and abiding with us, till we grow heartily tired of each other. Till then I am sincerely yours."

To Miss Lowe. "Exeter, April 20, 1837. We have been just reading in Sparks's American Biography, (Vol. VII.) Miss Sedgwick's Memoir of Lucretia Maria Davidson, who died when a little older than you are. She had great talents, but with less would have been loved by all who knew her. We intend Jane shall read it, and be what she was; but postpone it till you come, that we may have two Miss Davidsons instead of one. There is a fine young man just come to the academy from Buffalo. He looks a little like a certain relative of mine about his own age. I know well this will have no influence in hastening your return; but I am sure you will like him. His father places him in some measure under my care, and I want some discreet person to aid me."

To Miss Hammond. "May 6, 1837. How I long to have last autumn return, and you in your old seat! I think I may then defy any one to show a happier circle — a small one indeed, but kindred spirits, loving and being loved. Earth can give no more; indeed, this must be one of the joys of heaven."

On the 14th of July, 1837, new interest in life was given to Judge Smith by the birth of a son to bear his name.[1] "At this moment," he said in writing to a friend, "there is not a speck in my horizon, and I only want some dear friend, by which I mean you, to rejoice with me."

To Miss Ellen Smith. "Exeter, 30th November, 1837. My dearest Ellen: When I sought your correspondence and friendship, (for uncle and niece are nothing,) I did not know their value. Perhaps as many on full knowledge prove better, as those that prove worse on trial. This is a good view of human nature, and I cherish it. Among my blessings, (and they are not few or small,) I reckon you, my dear Ellen. You must live and be happy as long as I live, and as much longer as it may please God. I was not quite prepared for the news of S. M.'s[2] death; but for some time I have not thought he would continue long. The chief value of his life was for his daughters.

[1] From the Family Record, in the hand-writing of J. S. "Friday, July 14, 1837, 1 P. M., filius natus fuit, quem Deus a malo defendat; baptiz: a Rev. J. Hurd, 22d October, 1837, nomine Jeremiæ, anglice Jeremiah."

[2] Judge Smith's brother-in-law, Samuel Morison, father of three deaf and dumb daughters.

They particularly need a father or brother. Their friends must supply their places. I wish I was nearer to them. Living in the village, as they must, it is indispensable that some trusty person should provide them fuel and provisions. I am sorry, my dear Ellen, for this new draft on your benevolence. I know nobody whose society will do them so much good as yours and Nancy's, and nobody more disposed to contribute to the happiness of others. I almost envy two such fellow-laborers in making others happy. A blessing must attend those who serve such pure-minded and excellent girls. Their mother will look down from heaven her thanks. My Elizabeth regrets the distance between her and her favorite nieces. When the pleasant season comes, she will hope for a long visit from them — their comforters and helpers.

"Elizabeth and Jeremiah are as you would wish. The boy is a source of pleasure to me far exceeding my anticipations. I pray heaven it may continue. You know I am not one of those whose future prospects are gloomy. 'Enjoy the good the gods provide you,' is a good Christian as well as heathen maxim.'"

To Miss Hammond, 19th December, 1837. "I am engaged in my intervals of leisure, in reading Southey's Cowper; and admire the man and the work more than ever. When the pleasant season comes, you must come, my dear Sarah; 'all that is here is thine, together with the hearts of those who dwell here.' We will read Cowper's Life and Task together, and meditate upon them till we three become as good as he. I did not intend to be guilty

of rhyme, but to deal in sober truth, which is in harmony with all my feelings at this moment."

6th March, 1838. "I have continued reading Cowper, and admire him more and more. His letters — I have read them all — compare well with Horace Walpole's.[1] If this were fifty years ago, I should almost hope to imbibe some of his spirit. Don't think I mean his morbid distemperature of mind; a despairing frame of mind is of all things the most remote from my nature. I am always, if not happy, at least free from the glooms, see things in their best light, and when trouble comes, as come it will, bear it the best way I can. Cowper was, by nature, gay and lively, willing and capable of mingling in the joys and sorrows of his associates; but there may have been at the bottom a little of the leaven of insanity, and it was sadly inflamed by his religious creed, and the training under his ghostly director. I admire his letters more than his poetry, though some of that is very good; and it adds much to my enjoyment of Cowper, that Elizabeth goes with me, and beyond me. She has something of his orthodox faith, whereof I have none."

In December, 1838, there was received into Judge Smith's family an orphan child, and, says Mrs. Smith, "the recollection of his patience and gentleness towards that little girl, are redolent of the odor of perfect charity. She was not quite four years old; the delicacy of her health made it expedi-

[1] To his niece, J. S. says: "C.'s letters I rank next to Horace Walpole's; that is, second in the world of letters."

ent that she should sleep where there was a fire, and from a dislike to inflict on domestics the labors growing out of a deed of charity, she was finally established in Judge Smith's chamber. She was restless, and a very bad sleeper; but at no time did he complain of this annoyance, and never once did he propose her removal to another room. On the contrary, the sight of her seemed to double the enjoyment of his own comforts. When he saw her put to bed at night in her comfortable flannel night-gown, or dressed in the morning before the cheering wood fire, he would look at her with so much pleasure, and exclaim again and again, 'a brand snatched from the burning, a brand snatched from the burning!' Her father having died of delirium tremens, and her mother being a common street drunkard and beggar, it was hoped that early culture and freedom from temptation would keep off this dreadful taint; and she already gives promise of being a useful, energetic and honest domestic."

Judge Smith had quite an uncommon power of interesting children. A lady, at whose house he was, asked her daughter, about three years old, to go to another room for her father. "I will," she said, "when Judge Smith is not here." A little fellow, just beginning to talk, was so entertained by him that every time he paused, the child called out, "Man talk more, man talk more." Another little girl with whom he had been playing and talking some time, being asked to go out with her mother, said "No, no; I want to stay here. I want to hear what he will say next." In his talk and by his gestures, tones

and actions, he presented the most ludicrous combinations and contrasts. But it was only those children, who had a quick perception of the humorous, and who could distinguish as by instinct, what was said in jest from that which was said in earnest, who could understand him. I remember the utter astonishment with which he was listened to by a little boy who had been brought up in the literal observance of the truth, and whose moral sensibilities were of course unfavorably affected by such conversation.

His intercourse with the young generally had no tendency to increase their reverence for conventional forms, or the idols of society. And occasionally his manner of speaking of the best observances and men, was such as to throw an air of ridicule round them in the minds of his associates, before they had learned, in his more serious moments, or from a more intimate acquaintance, how deep and real was his respect for them. This trait, which, from its liability to be misunderstood and perverted, is not to be recommended for imitation, has belonged as a characteristic to some not only of the most upright, but the most devout of men. No one ever possessed it in a greater extent than Thomas Fuller, the author of the "Worthies of England," and with all his levity of speech, nay, through it all, where shall we find a more sincere and beautiful spirit of religious reverence, a more truthful and hearty respect for the good men of his own and all former times? The language of Sir Thomas More upon the scaffold, must savor of irreverence and impiety to those who can see religion only in solemn looks and tones; but

where was there ever a more devout or devoted spirit? And old Hugh Latimer, who could not help punning as they were preparing him for the stake, found no subject too sacred for the cheerful, mirthful and humorous flow of his devout and Christian soul. It might have been irreverence in another to talk as these men talked, under circumstances of such awful solemnity; but in them it was only the exercise of a gift, which they had received from God, and which they rejoiced to employ in his service. No one, I think, can read Izaak Walton's Lives, or gain admittance into the sanctuary of George Herbert's poetry, without seeing how much of that wit, which some would condemn as levity, may enter into the conversation of the most holy men, and how gracefully it may minister even at the altar of their devotions.

But there is no gift of the mind which, especially in its connexion with any religious duty, is more a stumbling-block to some well-meaning, and even sensible men. Religion among us has been taught to clothe herself in a sanctimonious garb, rather than in the beauty of holiness; social respectability walks on stilts, and unless treated with a formal respect, tumbles to the ground. We are, with the exception of owls and monkeys, the most serious people on the face of the globe. Our very amusements have an air of seriousness, and, as on the Athenian coin, the image of an owl is required to give us currency in society. This owlish wisdom and solemnity, with all the empty pretensions that are sustained by them, Judge Smith regarded with aversion and contempt. It was

in reference to them that he said, "I know the world, and despise it. I say this not from pique; for I have personally no complaints to make; but from conviction that it is just and merited." "One thing I must confess, I have now in my old age less deference for the opinion of others than I had in earlier life; not that I think better of my own wisdom, but less of that of others; I do not think more of myself, but more for myself." There was no way in which he so much exercised the keenness of his wit, as in exposing the foolish claims to distinction, (whether for family, wealth, learning or station,) that men are constantly setting up. It was his especial delight to pull off the masks which hide so much emptiness and vanity. At the same time he was no Cynic, nor did he doubt the existence in the world of high attainments, and great and noble qualities. He was quick to recognize, and glad to acknowledge and respect them. The innocence of childhood, the purity and confiding tenderness of woman, the manly virtues which dignify the statesman, and still more, the humble graces which adorn the Christian's life, were subjects on which he delighted to dwell, not as abstractions, nor as the product only of a former age, but as qualities which he had seen and known, and which were still to be found among men. No one could be less a misanthrope, or farther from cherishing that barren skepticism incarnated in Voltaire, which grins at human virtue, and withers the soul in which it dwells. Nor was he like Goethe, in whose clear and passionless mind the follies, vanities, hopes, virtues, vices and crimes of man may see themselves as in a

glass, which continues itself untouched by sympathy for human weakness or suffering, with no yearning for human affection, or longing for a divine love. He was however, almost entirely free from anxiety, and it might probably be said with truth that during the last twenty years of his life, he never lost an hour's sleep from the apprehension of evil, whether of a public or private nature.

CHAPTER XVI.

1838 — 1839.

JUDGE SMITH'S OLD AGE — YOUTHFULNESS OF FEELING — HABIT OF COMPARING THE PAST AND PRESENT — INTEREST IN NEW BOOKS; IN THE YOUNG; IN EDUCATION — INTERCOURSE WITH YOUNG LADIES — LETTER TO MISS ROSS.

JUDGE SMITH had now entered his eightieth year. For seven or eight years after he left the bar, his "crazy machine," as he called his body, had been steadily mending, and, till after the lapse of nineteen years, his constant good health was interrupted by fewer ill turns than during any period of his active life. His mind had lost nothing of its strength, nor his feelings anything of their elasticity and freshness. His eye kindled as brightly, his humor played as sportively, his sense of enjoyment was as keen, and his power of imparting it as ready as in the prime of his manhood. His nature, disciplined by suffering, and then cheered by an unlooked for amount of happiness, had been greatly softened; and his passions, instead of subsiding, as they too often do, into the

fretfulness of an imbecile and comfortless old age, were gradually transmuted into affections which grew more pure and confiding as he approached his end. In fact, as was said of another, "he never deteriorated; like the setting sun, when his course was over, he departed in full majesty."

He undoubtedly owed much to his natural temperament and constitution, but far more to the spirit and habits which he had taken so much pains to cultivate. As he always woke bright because he went to sleep bright, so his fresh and joyous old age was but the product of what had gone before. First and greatest among the sources of happiness which he had cherished, was his unwavering religious trust. "Surely," he said, "people really and truly under the influence of rational principles of religion, must be happy. Some people's religion fails to regulate their passions and affections. It does not produce all its good fruits; it is not quite practical enough." In a letter to his wife, then absent from home, he says, "I am lonely because reading (just now) engages my mind and heart less than in days of yore. I shall rejoice to see dear Ellen, but have no ground to expect her. Sometimes the best things come unexpectedly upon us. I think my forte is taking patiently whatever comes, and bearing well inevitable evils. They are then less evils, and may even prove blessings in disguise, and all sorts of blessings are welcome. Do not shorten your stay on our account. Remain as long as you are sure you soften pain or confer pleasure, and be sure to come to us in good health."

Writing from Boston, he says, "I have suffered nothing but pleasure. My taste for the great has, and my love for the good has not, diminished; so you may safely trust me abroad for a few days. The day is eminently delightful; I hope you enjoy it. Is it not criminal to suffer the good things of heaven to fail of producing the happiness intended? All this only proves that my feelings at this moment are of the pleasurable sort. I wish they were transferable; then yours should be at least in equilibrio." These are extracts taken almost at random from his letters, to show the contented, and (may I not say) the Christian spirit, that ran through his life, and which, by its quiet cheerfulness, protected him not less from the little annoyances, than from the great calamities which he had known.

As an old man, he was not exacting or complaining. He had had his day, and was willing to be set aside. "It is not easy," he said, "to deal with two generations of men. Sufficient for one man is one generation. How rarely an eminent statesman, lawyer or politician, maintains his high standing beyond thirty years! Why do we blame the world for turning old age and infirmity adrift, and retaining the young and the active, who can serve them better?" "How natural that the old should not be beloved! They are every day gradually withdrawing their confidence, and it is confidence, unsuspecting confidence, which begets love." Quoting from Lady Mary Wortley Montague the words, "I don't know how I look, as it is eleven years since I saw my figure in the glass, and the last reflection was so disagreea-

ble, that I resolved to spare myself such mortifications for the future, and shall continue that resolution to my life's end," he adds, "Strange that a woman of sixty-eight should be ashamed to show a wrinkled face. We are to avoid the infirmities of age, but not be mortified at them." "Where," he asked on his eighty-second birth-day, "where is the world I knew fourscore years ago? If Methuselah had been on the stage when William the Conqueror landed in Britain, he might have been alive now, to tell us all about William and his successors."

Judge Smith never fell into that too common vice of age, exalting the past at the expense of the present. He gratefully acknowledged that he saw progress in almost everything; in the arts and sciences; in our benevolent institutions; in legislation and the administration of justice; in the general aspect and condition of the country; in furniture and dress; and he believed also in virtue and knowledge. "It would be something new," he said, "to speak of improvements in dress; but since gentlemen, and, I may add ladies, have been more engaged in storing the inside of their heads with knowledge, a less expensive and more simple mode of adorning the outside has prevailed."

"I remember to have seen, when a student at law in Salem, a letter written a century and a half before by a member of the family, who enterprised and happily achieved a journey to Boston. He had been so good as to relieve the anxiety of his friends by a line from the half-way station at Lynn, saying all was yet well, and his hopes sanguine of a successful ter-

mination of the journey, and promising to write as soon as relieved from its fatigues. This letter was a fulfilment of the promise, and made doubly welcome by the information that all their friends and relations in the capital had been blessed with good health. He gave his friends in Salem a rich treat in the account (which indeed constituted the bulk of the letter) of the Thursday Lecture, from which he was just come; who preached, the text and heads or principal divisions, with the more important subdivisions, and the uses for examination and improvement."

"The transition from roads and carriages is natural to the farms, fences and houses of the persons who have occasion to use them. On all these subjects in our country north of the Delaware, I can, as early as the close of the revolutionary war, speak from some actual knowledge. There were some good farms, and some good farmers; but these only served to show in a worse light the general aspect of the country. The agricultural books were mostly English, better calculated to mislead than instruct; farming knowledge was merely traditional, and of course mixed up with the ignorance and prejudice of a more rude state of society. I shall never forget the appearance of Varlo's Husbandry, which was brought in a wagon or horse-cart from Pennsylvania, preceded a few days by the agent with his subscription paper. The gentlemen round Boston, and some few in Portsmouth liberally subscribed. When the book came, it was soon discovered to be the compilation of an ignorant adventurer, got up to sell. There was then

no American Farmer or New England Farmer, no such treatises as those by Deane, Peters, Bordley, and many others now in everybody's hands. The gentlemen farmers of that day rather brought disgrace on science than recommended it. Their farming, remarkable for nothing but the expense, was justly ridiculed. All things are now changed. No man can ride through the country without being cheered on his way by the sight of good farms, well cultivated, and no less gratified by the intelligence and skill of the cultivators."

Judge Smith saw even greater improvements in more important matters. "Among the charities of this charitable age, there are some every way worthy of honorable mention; hospitals for the sick and lunatic, asylums for the blind, and schools of instruction for those whom heaven, in its righteous dispensations, has deprived of the gifts of hearing and of speech. When I take up a newspaper, and find a rich man remembering the forgotten,[1] and hearing the cry of the dumb who cannot speak for themselves, I am ready to thank God that I live in a Christian world.

"It is said we like the things of our youth. It is not so with me. I prefer the present times in most things. While we live in the world, we must take in some degree the color of the world as it moves along. The Persian epitome of the history of man, 'they were born, they were wretched, they died,' is not true of us. They were born, they daily advanced in civilization, virtue and happiness, they died and

[1] Burke.

were transferred to a new region, where more perfect enjoyments awaited them. Can we improve in everything but morals; in all things without, but nothing within?

"The little we have sketched suffices to show the perfectibility, or rather the improvability of our race. What though we cannot here reach the summit? There is a pleasure in climbing, especially where every step increases the extent of the prospect, and adds something to the rational enjoyment of life. Little you and I can do, but the least mite [cast by each] into the treasury of knowledge will add something to the general stock."

This was Judge Smith's habitual way of comparing the past and the present, and it is easy to see how much it must have added to his cheerfulness, as he found himself borne along so far upon the stream of time. He did not allow himself to fall behind, but, in his intellectual and social habits, kept up with the world. He knew, except through translations, very little of the continental literature of Europe; but kept himself well acquainted with what was going on in England and the United States. He read the principal reviews, and added to his library the most important works as they came out. Many rare and curious books, which he did not care to purchase, were furnished for his perusal, through the kindness of his friends[1] in Boston and Cambridge. He en-

[1] He was greatly indebted for favors of this kind to Mr. Charles Folsom and Mr. Joseph E. Worcester. Writing to one of them for some work, he says, "If it cannot now be had (at the bookstores,) I should be glad to get it on loan from some rich man who has read, or who never reads his

joyed reading over again the books he had read in youth. "I am reading," he said in 1839, "Lady Mary Wortley Montague's Works, the new edition. It delighted me half a century ago; re-perusals of such works always give me double pleasure — new and old." But he also enjoyed works that were entirely new in their modes of thought and expression; as for instance, the works of Thomas Carlyle. He read "Sartor Resartus," when it first came out, and found himself as wise as before. But he saw that he was dealing with a man of genius; and though he never became reconciled to the style, his numerous quotations from "the History of the French Revolution," show that he had at length learned to enjoy exceedingly the wit, the pungent satire, and vivid descriptions of that eccentric, but original writer. His Reviews, as they came out, he enjoyed still more. "I continue," he says, "the reading of Carlyle's Sir Walter Scott. The pleasure increases, and I husband it as well as I can, reading but a page or two at a time. I have taken up Emerson's Concord,[1] and admire it mightily. I shall profit by it." Bancroft's History he read with interest, but his common-place book contains severe comments on its doctrines; not more severe, however, than his animadversions on some of the other popular literature of Massachusetts;

books;" and many books were in this way lent to him. His own library, which had been carefully selected, contained rather more than four thousand volumes, and cost about ten thousand dollars.

[1] An Address at the Centennial Celebration at Concord, Massachusetts, by Ralph Waldo Emerson, which Judge Smith considered much the best thing of the kind that he had then seen.

particularly some of the orations and reviews which were so much admired in their day, but which he regarded as inflated specimens of oratory; wanting in purity of taste, and still more in sound, practical judgment. In literature, as in society, there was nothing which he could not better endure than mere empty show. He liked works of amusement, and was willing to read nonsense, provided it were willing to pass for nonsense. But the solemn commonplaces, which are every man's property by right of possession, swelling out in a fine drapery of words, and passing themselves off as something new and great, were his utter aversion. So too, much as he loved to follow an ingenious process of thought when there was substance in it, he had no respect for the fine theories, which, whether got up for self-adulation or the reformation of the world, make such a din in the ears of our modern society. They gave him, however, no uneasiness. The world had not been built, nor did he believe it could be destroyed, by such means.

Thus in his studies he found food for daily thought; and instead of lingering, as the half-forgotten relic of a former age, he went along a living man in the midst of a living world. "I have felt," he said, "nothing of that tedium which persons accustomed to the activity of public or professional life frequently feel in retirement." Having the best thoughts of past and present times within his reach, he could always, when other resources failed, retreat to his library, and there forget himself. "We have had," he wrote to his wife, "no company, and sometimes I have been solitary. I then turn afresh to my book again. O

blessed books! What would life be without you? A solitude indeed." In another letter he says, "Rejoice with me at this seasonable rain. It is quite refreshing to your Exeter fields. I enjoy reading such days exceedingly. I hope they have plenty of good books in the other world." So he went on to the end, as eager in the pursuit of knowledge, and finding as much enjoyment, and, with his richly stored mind, more instruction in books, than when, as a boy, he went, after his day's work was done, three or four miles on foot, to borrow some stray volume which he had heard of.

Judge Smith's interest in the young was one of the most beautiful features of his character. His love of children, his power of interesting them, and his intercourse with the younger members of his own family, have been already spoken of; and mention has been made of his attention, when on the bench, to young men just entering the profession. In his situation as president and treasurer of Phillips Exeter Academy, which offices he held from 1828 to 1842, he was brought a good deal into connexion with the students, and it was always a great pleasure to him, to encourage and help forward those who were disposed to make the most of their advantages. For several years he used to have some half a dozen students, to dine and take tea with him once a week. He always rejoiced to see in his house a lively, intelligent boy, and entertained him with as much vivacity and politeness as if he had been a man of his own age and standing. His house became, therefore, a favorite resort for many young men. An ex-

tract from the letter of one[1] who had then just entered the academy, and whose early death has fixed its everlasting seal on a life of peculiar beauty, shows the feelings with which many came from his house. "This week has been the longest I ever spent. I think, from the time father left till Saturday noon, I have not kept the run of the days of the week; but thought they would never get to a stopping-place. When I came from school Saturday noon, after being frightened out of my wits by so many strange faces and dignified looking teachers, and found father gone, and Mr. M. gone, and not a single familiar face, every body and every thing looking strange and unnatural, and feeling too that I cared for nobody, and nobody cared for me, I must say I felt more homesick than I ever expected to be. I was really rejoiced to see a mosquito, although he did come to bite me; he looked like an old friend, and I was more glad to see him than I ever was to

[1] Robert Swain, born at New Bedford, February, 1823; entered Harvard University in 1841; died at Harrisonburgh, Va., the 15th of June, 1844. It was my privilege to know him through years of intimacy, first as a pupil and always as a friend. His character, chastened and purified by a life of suffering, but at the same time a happy life, presented an assemblage of virtues exquisitely blended, and unfolding, as death approached, into an almost celestial beauty. He had, what is perhaps the rarest of all endowments, that simplicity of mind and heart, which is so inseparably connected with purity of taste, soundness of judgment, and rectitude of conduct, and which, when joined to a delicate mental organization, and shining out through the lowly and lofty graces of a religious faith, is among the fairest of all the beautiful things which God has placed upon the earth. His life was one of continued progress; each year witnessing some new and brighter manifestation of character; till his whole spiritual nature had become so developed, that, though he died at the age of twenty-one, his death could not seem untimely to those who knew him best.

see a mosquito before. But in the afternoon I went to walk in the woods, and coming back stopped in at Judge Smith's to pay my tuition, and found that an excellent place to cure homesickness — they were all so kind and pleasant, and such a remarkably pleasant house and grounds; and then I suppose Mr. M. would say the young ladies were so agreeable. At any rate, I have not had an attack of the disease since, only occasional touches now and then. Yesterday afternoon I spent at the judge's too. He invited George H., who rooms with me, and whom I like very much, C. H., another boy who boards at this house, and myself, up there to dinner. We spent the afternoon and evening very pleasantly. The judge is the most entertaining old man I ever saw."

Judge Smith's patience in the prolonged visits of stupid young men, or of boys who, from a feeling of diffidence and awkwardness, could not get up to go away, was of the most exemplary kind. I remember one in particular, a heavy, dull fellow, with good intentions indeed, but none the more lively on that account, who used to call often upon him, and who never seemed to know when to depart. He was poor, and had the most persevering wish to get an education. As a trustee of the academy, Judge Smith uniformly voted against assisting him from the funds of the institution; but he submitted to his visits, gave him all the advice he could, furnished him with money, invited him (as he was boarding himself,) to come often to his house at meal times; though he was all the while dissuading him from his

attempt to get that sort of education, for which nature so evidently had not designed him. He honored his perseverance, and felt for him; but could not in conscience encourage him in his undertaking.

It was always particularly Judge Smith's delight to aid young men whom he found struggling with the narrowness of their means in the pursuit of knowledge. He, who prepares these pages, is but one of those who, when poor, friendless, and inexperienced, were permitted to lean on him, and who will not cease to bless God for such a friend at such a time. It was not what he gave, liberal and timely as were his benefactions, that awakened their gratitude. The manner in which he did it made them feel, not as dependents on his charity, but as children admitted to his confidence, and receiving these tokens of his affectionate regard. The richness of his instructions, descending into the minute branches of learning, which at the beginning are so essential to the future scholar; the ease with which he entered into the feelings of the young, charitably sympathizing even with their extravagances; the delightful conversations by which he introduced them to the great men of a former generation; the intense desire for knowledge, virtue and an honorable distinction among men, which was kindled by their intercourse with him;—these higher obligations, which every ingenuous mind rejoices to acknowledge, hardly permitted them to feel the sense of pecuniary obligation, which so often injures both him who gives and him who receives.

There was no subject in which Judge Smith through life, but especially towards its close, took so

decided an interest, as the education of the young. One of his earliest efforts in his native town was to improve the public schools. We have seen how earnestly, as a judge, he endeavored to impress upon the community a sense of their importance. In his later lectures, the diffusion of knowledge and virtue among the people was still the subject uppermost in his thoughts. But he was not one of those narrow men, who would build up our academies and common schools at the expense of the higher institutions of learning; and, notwithstanding the shining exceptions that are given, he did not believe it wise to enter upon the studies of a profession without a college education. To a young man prepared for the sophomore class, but rather advanced in years for entering college, who asked him whether he should not begin the study of the law then, he replied, "Without a thousand times more knowledge of you than I possess, I could not advise. Your age is against the college course. If your object at the bar is money, then the sooner you enter the better; little preparation is necessary. If content to carry your professional character to a moderate height only, you may do very well without college. If your aim is to be a lawyer in deed as well as name, — to be a liberal, scientific expounder of the law, and to enjoy it, — you can hardly have too much preparation. Six years of preparatory studies before the study of a profession, are little enough. I should prefer three years' college and three years' law studies, in almost any country office, to five years of the latter, even at the Cambridge Law School. Twenty-five is a good

age to commence practice; it was mine, and I think early enough. But after all, you must be your own adviser. The mark you aim at in life must decide. I have no doubt you can be what you will."

With his deep interest in the education of the young, particularly of those in destitute or moderate circumstances, it was to Judge Smith a source of great regret, that the expenses at Harvard University should be so great as almost necessarily to exclude such young men from its advantages. It does seem both unreasonable and unjust, that an institution endowed with funds to the amount of more than half a million of dollars, should set so high a price on its instructions, that its charities, (and all its funds are charities,) can be of use to few except the sons of rich men. The great body of those who seek a liberal education, the sons, for instance, of intelligent farmers and mechanics, are thus in a great measure shut out from its walls, and the college is deprived of the presence and example of those, who, bringing with them less expensive habits, and having every inducement to improve themselves, would kindle the zeal of others, and give character to the institution, and who, returning home when they had finished their course, would awaken through the country a new interest in behalf of the college. Its well-being, thus identified with the cause of education throughout the community, would soon come to be more generally cherished and advanced. Instead of being a sort of high school for the sons of rich men in Boston and the neighboring towns, it would become a true university, entertaining, with an enlarged hospi-

tality, those who have only character, talents and a thirst for knowledge to recommend them, and by means of them dispensing its instructions through the whole land. On none would the influence of such a state of things be more happy than on those classes who now usually resort to it for their education. In taste and knowledge, in its instructions and intellectual requirements, such an institution can hardly raise itself too high above the community at large; but it can hardly open its arms too wide to receive and cherish all, of whatever class or condition, who would avail themselves of its advantages. If its present funds cannot be so applied as to lessen the evil at Harvard University, is it not a matter worthy to be commended to those who would be among its best benefactors?

Judge Smith was so much interested in this matter, that, when without children, it was his intention to leave a considerable part of his estate for the foundation of scholarships at Harvard University.[1] About a year before his death, he was applied to through a common friend, by a gentleman of large means and a larger heart, for advice respecting the endowment of an academy, in the hope that it might "render essential service to some poor boys of future time." After

[1] His plan was to leave, say, an annuity of one thousand dollars for six scholarships — this sum not to be doled out as a reluctant or degrading charity, but as a reward and encouragement to the most deserving among those who might not otherwise be able to support themselves. At the Abbot Festival, it was proposed by many of Dr. Abbot's pupils, to endow a scholarship of this kind to be called by his name. No more fitting monument could be raised to the memory of an honored instructer. May it not yet be done?

specifying some particulars which it is not worth the while to introduce here, Judge Smith said, as appears from a rude draft of his letter, "I would not have it limited to the blood or kindred of the donor, or to natives of particular places, but to bright boys within certain ages. My experience is in favor of fourteen to twenty. I wish Mr. —— would extend his views beyond charity scholars, in and during their stay in the academy, and do, on a large scale, what I once intended on a small one — found several scholarships in Harvard College; the academy trustees to select from their students at the beginning, and the college to have a voice in continuing them. This is the best of all charities; the object the best and the most useful, and the most likely to be faithfully executed.

"It would add, I really believe, to my joys in heaven, if haply I may find myself there, to look down on a number of fine young men, increasing in knowledge and virtue on my honest earnings. This good feeling sometimes almost excites regret, that other objects command the whole of my scanty means. Have the goodness to express to Mr. —— my best wishes for his health and happiness here and hereafter, and to believe me, as in the many by-gone years, your sincere friend and obedient servant."

The sort of interest Judge Smith took in young ladies, may be seen in part from his letters already given. The three, to whom he was most attached, and with whom he corresponded most freely, were Miss Ellen Smith, the daughter of his brother Samuel; Miss Lowe, a niece of Mrs. Smith's, and Miss Hammond, of Boston, a young lady whom he first met

while on his journey to the south in 1836, who was afterwards the intimate friend of Mrs. Smith, and came more than once to watch with the judge during his last illness. No kind of social intercourse can be more pleasant, or more useful to all concerned, than this union of youth and age — the old man cheerfully imparting his gathered stores of wisdom, and enriched in return by that which softens his austerity and keeps alive his better nature. He becomes, then, in his affections, like the evergreen on which, as the old leaves drop off, new leaves are formed, and it continues crowned with greenness through the year. Some further idea of what this intercourse was, may be given by further extracts from Judge Smith's letters.

To Miss Ellen Smith. "Exeter, 14th March, 1839. My dear Ellen: I am sure you will be sorry I have so good excuse for not writing. I have been for the last ten weeks more than usually indisposed. My cough in the first half was quite distressing. It is now quite gone; but I am less relieved than at any former period within my remembrance. My cheerfulness did not forsake me. I longed for you to nurse me, partly on account of your own merits, and partly because it would relieve Elizabeth, who had too much on her hands. The dear Jeremiah burnt both his hands on the cook-stove sadly; he bore it like a man, and is now quite well and happy. Elizabeth has been much as usual, but is now a good deal indisposed. Mary Lowe has come to our relief, and we shall all, I hope, do quite well very soon. How have you spent the winter? I hope not unpleasantly. I believe you are happy on less means than most

other people. By means, I must refer to externals, for in the better sort of good things you abound. A disposition to be pleased, especially when we have plenty of duties to perform, is, next to religion, the best of heaven's gifts.

"I long to hear particularly of our Peterborough friends, and you are my only reliance. Your last letter was admirable in gossip and kindness; and remember you must not change, on peril of incurring a diminution in my love. I am pretty sure I should be the greatest sufferer. I have heard it said that age blunts our kindly affections; I do not find it so.

"I forget whether you were particularly acquainted with my favorite Eliza Odiorne. She has lately lost her lover — was at Amherst, Massachusetts, at the time. I hear she bears it well — like a woman — the phrase will, I hope, get into use.

"This is a very stupid letter, but don't, dear Ellen, ascribe it to loss of mind, and especially of heart toward. I will do better the next time. With my love to your father and mother, and the Miss Morisons, believe me your affectionate friend."

To Miss Ellen Smith. "Exeter, Monday, May 27th. You are not to suppose, dearest Ellen, that I am not thankful for your letters, because I do not immediately answer them. The neglect, assuredly, never arises from want of love for you. I owe you for two letters: this proves my willingness to be in your debt; yet this is the only sort of debt I am willing to owe. Every expression of your regard gives me pleasure; and this is one of the few things whose value increases by repetition. How kind it is in Providence

to give me such a correspondent, when so many friends and relations are gone to distant places!

"I flatter myself it will give you pleasure to know that I am in the enjoyment almost of my usual health; but a little more sensible than formerly, by how slender a tenure I hold this greatest of earthly blessings. I must regard it merely as a present good — enjoy it as such, ready at any moment to part with it. It would be unreasonable in me to expect rugged health at this day. I wish your father's was as good, and as much better as you could desire. I am glad to hear that your mother is so well. At this moment, Ellen, it would give me great pleasure to look into your cottage on the hill-side. I could say a thousand things not important enough to commit to paper. But in such trifles consist many of the pleasures of life: you need not be much surprised, if in the course of the three or four coming weeks, you should see your aunt and myself in Peterborough. There is nothing in which we (Elizabeth and myself) agree better than in love for you.

"Would you were here, Ellen! We promise ourselves fine weather after the cold and dull we have had — come and help us to enjoy the good. We have had no blossoming in the garden 'to speak of.' In general, I am as little dependent on the weather as most men; but owing perhaps to the remains of indisposition, I have felt it a little. I could, perhaps, in that weather, have enjoyed a little French or Latin with you.

"Have you heard that your friend Miss —— is going to instruct in an academy at ——? and it is

said the situation was procured for her by Mrs. Walker. Is there to be no end to the good deeds of that woman?

"Mrs. S. thinks you would find Mad^{e} de Stäel's French Revolution in for a good book. We have it in French and English — separate books, which are at your service, if not to be found with you. Possibly Mr. Leonard may have the work. I have been reading the Pickwick Papers, by Dickens. He keeps me excited all the time. He is my knitting-work; but I do not recommend the book to you. You will read Oliver Twist with pleasure, and Nicholas Nickleby, when all out. I recommend the first volume of Washington's works — Sparks. It is his Life, and I think exceedingly well done. Mrs. S. is engaged in reading Taylor's Home Education, and is much pleased with it; from the passages she reads to me, I agree in the commendation. There never was a time when advice as to the choice of books was more necessary; there are so many, (and floods of trash) in circulation. Need I say, dearest Ellen, that I take pleasure in conversing with you, and that I give full credit to your polite declarations, desiring me to write long letters. I need not say that Elizabeth and Jeremiah, Jr. send their best love, and that I am yours, very affectionately."

About the middle of June, 1839, Judge Smith went in a chaise with his niece, Mary S. Lowe, to Hanover, which of course took him through nearly the whole extent of New Hampshire. It was a road which he had often travelled in former days. — "What ravages," he said in a letter to his wife, dated

June 21, "twenty years have made among my friends and acquaintances on this route! Well may we say 'I would not live alway!' I believe I find it as easy to make new acquaintances as most people, but even with me, *tempora mutantur*. 'Blessed is he that expecteth nothing, for he shall not be disappointed.'" Two days later, from the same place he wrote: "I have escaped an unlooked-for calamity. Last evening a committee from the senior class waited on me at Dr. Lord's, requesting an address to the students, &c. I declined on the pretence of want of time, health, &c.; in truth, want of something to say, and a little awkwardness at this day in the saying of that nothing. Whether I satisfied the applicants or not, I can't say, but I am sure I have made a saving of character. I was in some measure governed by my regard for you and Jeremiah, to save you from the mortification, twelve years hence, when you come up hither to enter the boy, of hearing the address disparagingly spoken of. There's a prudent man for you."

Extracts from a letter to Miss Ellen Smith. "Exeter, July 3, 1839, Wednesday. Mary and I had a delightful ride on Monday. It delighted me to travel on the new road — an excellent one — and Mary to see the greatest display by the sides of the road of the laurel in full blossom, the largest bushes covered with tops of beautiful white and pink. We saw, for miles, enough to fill your large church twice over. You need not believe me; I am afraid I should credit nobody's true account. Mary loaded the chaise, and her only regret was, that she could not take them all. We reached Derry in good season, and the next

morning had a pleasant though warm ride home. We found the family very well and very happy. Jeremiah knew and kindly received us — never better. If you were with us, the measure of our happiness would be complete, bating the dear Elizabeth's absence.

"Mary will stay, I hope, till the mistress comes. So far all good; but I find myself a good deal indisposed and a little feverish, and have just sent to Dr. Perry for something to make me well.

"I do not know that I ever enjoyed more tranquil pleasure on an excursion in all my life. I almost believe I have a good tolerant spirit. How much Mary may claim as the procuring cause, I cannot say; I am sure my dear Ellen may claim a good share; and may it continue so to the end of the chapter, whether the same be longer or shorter. I cannot but rejoice that I enjoy so much from the good things in my allotment, and suffer so little from the annoyances and evils of life. . . . I am not sensible of any great failure in these respects; but in the capacity for bodily labor, the case is different. A little exertion fatigues me."

"Thursday morning. How I pity the poor, lonely old bachelors. After forty no man should be single, nor woman either. Do you know I am puzzled to account for Mr. B.'s visit at your house Sunday evening? Coupling that with the house, contiguity, &c., I am in a maze.

"We have lost Mary. Her brother wrote her to attend a picnic at South Berwick to-day, and she could not resist. Ednah would be there. For Ednah, read some favorite beau.

"I write, dear Ellen, because it gives me pleasure. I can hardly hope it will give equal pleasure to you; but if it gives you any, it is more than worth the *trouble*. This is not a proper word. But there is no mistake in saying, I am your sincere and affectionate J. S."

In the summer of 1838, Judge Smith delivered a centennial address in Exeter, at the close of its second century. He had spent upon it much time and labor. "It was," he said, "never a favorite with me. I have not been disappointed to perceive that the hearers have adopted the same opinion." It was probably (for I have not seen it,[1]) too much taken up with details for a popular discourse. The next summer he was requested to deliver an address at the first centennial celebration in his native town. He had been born within twenty years of its earliest settlement, had been personally acquainted with most of its original inhabitants, and had more knowledge of its history than all other men and documents combined. In his reply he said, "I have given much consideration to the request your letter contains, with a strong desire to gratify my earliest and most constant friends; but feel myself constrained, as well from considerations regarding them, as myself, to decline. I have little confidence in my own physical strength for such a service, and at any period of my life should have required a much longer time than is allowed for preparation. This is a case where there

[1] After having been nearly seven years in the hands of a printer, it is, I understand, to appear at last in the Collections of the New Hampshire Historical Society.

may be too much seniority," &c. In a letter written a day or two later, to Miss Ellen Smith, he said: "I can remember the time when nothing would have promised me more gratification than such a service; but Peterborough has departed from me and from its place, never to return. I hope the Grand Monadnoc will have the goodness to keep *its* place as long as I live." Most of the generation with which he had been connected, and all of those to whom he had looked up as his seniors, were now gone; and it must have been a melancholy task for him to stand amid strangers in his native place, to discourse to them of those his early friends, who had now, except a few feeble and gray-haired relics, all passed away.

I insert the following letter, as indicating the sort of feeling with which Judge Smith looked back upon the past, and especially on account of the subdued and tender interest which it shows he still took in the family connexions of his first wife.

To Miss Margaretta A. Ross. "Exeter, July 29, 1839. My dear sister: I am glad to find myself seated at my table in the library, resolved to acquit myself of some portion of the debt I owe you. You have been very good in writing so many kind letters, and I evil and apparently unthankful in not oftener acknowledging them. This has not, however, arisen from want of affection and esteem for you and my friends with you. I fear I am growing worse as I grow older. I was not in former times, say before the last twenty years, a negligent correspondent. I then quitted business, and am, I fear, since less punctual; but for the future I will try to do better. You must

not impute my neglect to your new sister. Her influence is all the other way. I assure you she knows a great deal of your family, and esteems you all, especially the female part, as you would desire. I have been, as you know, in the habit of preserving the letters from my friends, and have some drafts and copies of my own. My whole correspondence with your dear sister Eliza is on file, and so with Ariana. I wish it were larger; for it is exceedingly precious to me. I have also very many letters from relations and valued acquaintances, male and female. During the last winter and spring, Elizabeth and myself spent all our leisure days in reading them. It was pleasant to us both, and Mrs. S. is now the better informed of the two in my past life and in the history of your family. You, even you, can hardly conceive how perfect she is in the peculiar character of our late sister, H. M. R. You know how well and minutely and impartially, too, she describes things; and woe to the subject of her letters, if they happen to have any faults. It is a chance if we do not hear of them. She and her daughter Elizabeth, that used forty-three years ago to sit on my knee, died, I think, before my dear Ariana. If her sons partake at all of her energetic character, they must succeed in life."

After some details respecting his infant son, Judge Smith adds: "You are aware that I am upon the eve of fourscore, and do not expect to see him educated; but he is in good hands, divine and human, and I have no anxieties on this or any other score. The same kind Providence that has watched over the parents will not forsake the child. I wish you could

see him; I am sure it would give you pleasure. You have not probably forgot the dear child who was drowned in the Little River, Oct. 14, 1808. I can sympathize sincerely with your sister and niece in the deaths of beloved children, and most of all, with Mrs. Stewart in the death of her only child Elizabeth; and though her death happened twenty-four years ago, she still lives as freshly in her mother's remembrance, as my daughter, who died ten years ago, does in mine. I know not whether it is peculiar to me, but all my recollections of Ariana's person, character, and whole being, have ever been sweet, and I hope salutary to me.

"I suppose you have not heard of Mrs. Tenney's death. She was born April 7, 1762, and died May 12, 1837, in her seventy-sixth year. The present, as did the former Mrs. S., highly esteemed her. You have not forgot that our neighbors did not do her justice. She was always in the habit of intimacy with us; towards the end her visits were frequent, and there was no abatement in her powers of mind. Her sickness was but of a few days' duration, and she met the last enemy as a Christian should. She had joined our church probably after you left. The Doctor[1] died twenty-one years before her. Now that I am speaking of deaths of friends, I would add that of John Rogers, the cashier of our bank in your day. He died two years ago of general debility. Was it you or Nancy that went with me to Roches-

[1] Dr. Samuel Tenney, a man of talents and integrity, and particularly interested in scientific pursuits. He had been a representative in congress, &c.

ter, thirty miles, with Miss M. E—— and N. G——, the latter to meet her lover? He is now a judge of the supreme court in Maine, a rich man. The Mrs. Tilton, of Rochester, to whom the visit was made, died about two years ago; without children — a valuable woman. Miss Emery still remains in the state of single blessedness, with a lively, cheerful temper, and prudence, which makes a small sum, chiefly of her own earning, adequate to her support. She is now one of my Elizabeth's most intimate friends.

"Our village is so changed in twenty years, that you would hardly know it. It is much improved in appearance, society, and comforts. I wish you could have a walk in our alleys, garden, &c. You know your sister delighted in planting; we have plenty of shade, chiefly of her making. Our household is not very large. M. J. S——, who claims descent from the late W. S——, is just fifteen. I took her into the family seven or eight years ago. She is in the way of getting a very good education, is a handsome and bright girl. My object was to repair, as well as I could, the injury done by her father. You may judge somewhat of Mrs. S.'s disposition by her kindness to this young lady.

"Mrs. S.'s nurse in her last sickness, and housekeeper, and who died in the family, an excellent woman, left a son, now sixteen. I have sent him to the academy. He is a bright boy, and I hope will do well. My three deaf and dumb nieces are occasionally with us, and are charming, well-educated women. Mrs. S. is fond of society; we are seldom without agreeable visiters. I did not allow myself to live

above my income, even when without children. In that situation I intended to found two or three scholarships, for the maintenance of scholars at the university. You will not understand from this that my means are large. I never coveted riches, and what I have is the income from my profession, interrupted by serving in congress and on the bench. I have been always an economist, and would be so if I had my life to lead over again. My feelings towards you, Mrs. S. and Mrs. R., are such as I endeavored to express in my letter of 1833, and I shall be glad to receive at all times the most unreserved communications from you. Give my best love to the other two, and accept for yourself my kindest and most affectionate regards, in which Mrs. S. most heartily joins me."

CHAPTER XVII.

LETTERS — ADVICE TO JOEL FURBER — JUDGE SMITH SELLS HIS PLACE AT EXETER — RESIDES IN DOVER — RELIGIOUS VIEWS AND CHARACTER — LAST ACTS — SICKNESS — DEATH.

Judge Smith got through the winter of 1839–40 without any recurrence of the attack from which he had suffered the winter before, and found himself in the spring unusually well. In a letter to Miss Ellen Smith, after speaking of the death of a child in whom they were interested, he says — "We seem to live in a world where sorrows and joys are intermixed, and perhaps the one is as necessary as the other. . . . How are your good father and mother? Are we never to see them again? As the circle of friends narrows, our interest in those within increases, so that we have the same portion of kind feelings to soften the rugged scenes of life. . . . It is said we love our friends best when they are dead; their thousand merits then break forth, &c. I don't know how this may be. I am not sure we don't love them best at a distance. Their merits take a prominent place, and their faults sink in the distance, and yet how can

this apply to you who have no faults, and are besides always present with me, and whom I love equally, at all times and in all places? I believe we are made up of contradictions. However that may be, without contradiction and without paradox, I am, as always, your affectionate friend, J. S."

Extracts from letters to Mrs. Smith. "Exeter, June 18, 1840. I received (in a visit to Boston) all the attention I would allow, and enjoyed the rides all round exceedingly. You know I love the earth as well as its productions. I love the vegetable as well as the animal kingdom, in an inferior degree, however." June 24. "My friend —— and his wife, from the insane hospital, have just gone. She seems the more rational of the two, and is a very pretty woman. They are very poor, and I pity them, and have done my best to make a few hours of their life as pleasant as possible." June 27th. "The last part of your letter, — 'I am quite comfortable this morning, and feel that I am getting better,'— is very good; but you do not know how much you lose. Our place is beautiful — never better. You will lose a year; but I suppose you are saying, 'Elizabeth, thou hast many years in store,' &c. Heaven grant it may be so. Jeremiah is very well — happy as a prince. We get along very well. If either of my three favorites, Mary, Ellen, or the dear Sarah, were only to come, I should be too happy. But I will not let my enjoyments depend too much on others, and I recommend the same to you. I have no doubt we can, if we will, cultivate this spirit of independence. You think I have too much of it; experience has

taught it me. It only means non-dependence on the weak and wayward. There is no danger from dependence on the wise and prudent few." "I hope my friend did not use my name in his applications to your friends. He spoke of taking Dover in his way home. I suspect the spunging was his sole object. God forgive me; but I never liked beggars. I do not see why he cannot earn his living. His style of asking is that of a practised beggar."

"August 3. I attended church this forenoon, and apply myself this afternoon to Robert Hall. The dead man preaches better than the living one. My printed sermons are always far better than any I hear. This is one of the few subjects in which I am willing to differ from you, because I would not lessen your enjoyments. . . . . 4th. I think I shall go through the whole volume; and yet such reading tends to make me less satisfied with the preaching and society of less gifted men. . . . He was certainly a man of genius. How few such in his profession! And how fortunate that it is so! They are not safe guides, and cannot be happy with a stupid people, which truly characterizes the bulk of mankind."

To Mrs. Walker. "Sept. 22, 1840. A few days only have passed since we heard of the death of your much loved son. From the reports of his case that had reached us, we were not taken by surprise. Ever since we understood his case, we have felt intensely for you and all the survivors, but most for you. The closing scene must have been to you a merciful, though a painful one. I have not forgot my feelings on a similar occasion, and I hope your

better heart does not, as mine did, for a short time, indulge in murmurs against the hand from which these calamities come. We must not attempt to scan the causes of these severe afflictions, but content ourselves with the belief that all is wise and just and good. It is wisely ordered that your own reflections will gradually bring the comfort and consolation you need. A friend can sympathize, and that is not without its uses; but the afflicted soul must bear the sufferings alone. I pray God you may have the consolations which he can, and friends cannot, bestow. You will soon learn to appreciate as a comforter the excellent worth of the object taken from you, and the resignation and Christian feelings of the dear sufferer. We must, and so I thought in my case eleven years ago, believe in the influences of the Divine Spirit on the mind of the dear sufferer. Without this, it is impossible to account for what you must have witnessed in your son.

"But, dear Sarah, though we cannot bear your afflictions, we are desirous of having you with us, that we may do all we can to alleviate them. The bustle of the summer is ended and gone; we shall soon part with Joel, who goes to St. Louis in three weeks; our family will be small, and we have room, plenty and quiet. Elizabeth's health I think better, and she is relieved from her attendance on her mother, who is now much better. My own health was, I think, never better, and it is no part of a wise or a religious man to let these good things pass unenjoyed. I can think of nothing to add to mine so much as your society."

Joel Furber, who is referred to in this letter, and of whose short life a sketch has already been given, left Exeter for St. Louis, the 10th of October, 1840. The paper of advice which Judge Smith gave at that time to this fatherless and motherless boy, is so full of wise instruction, the fruit of many years' experience, and is marked by so warm and kind an interest, that I insert it here entire, both as a guide to other young men, and for the honor which it throws back on him who wrote it.

To Joel Furber. "In May, 1837, from respect to the memory of your mother, and from an opinion that your capacity was a good one, I determined to give you an academical education. I thought, if you made a good improvement of your time, you might in two or three years get such an education as might enable you to go through life in a respectable situation. I did not intend to pledge myself for the future; all was to depend on the discoveries time might make. Hitherto you have not disappointed my expectations, and the time has now come when your age and education fit you to enter on the world.

"I shall furnish you with testimonials of character and with letters to my friends in the west, to assist you in finding employment, and with advice till your own knowledge and experience may be sufficient to guide you. And here it may be proper to say tha your chief dependence under heaven must be upon yourself. Persons of your age, though not generally wanting in a good opinion of themselves and the world, seldom realize how little friends are disposed to do, or indeed can do, to promote their success in

life. It is in finding employment, or in what regards the first step, they will be found useful. When your character and disposition are fairly developed, you must rely on these to procure you business and friends; too much recommendation and assistance are sometimes productive of evil instead of good. A little suffering — difficulties to be overcome — a little mortification from the indifference and neglect of friends, are sometimes better than their opposites.

"It is indispensable that you start in life with a correct estimate of yourself. Be sure not to think of yourself 'more highly than you ought to think,' and that as regards your personal, mental and moral qualities. If you err here, you are sure to be corrected, and may perchance suffer a little mortification in undergoing the discipline of the world's school. It may, however, do you a great deal of good. It is not my meaning that you should err on the other hand, and think too meanly of yourself, and of your powers of mind, and moral strength. This would discourage and weaken your efforts. In the journey of life you will need all the strength you have, and you must feel that you have it. A low estimate of self might discourage, and a high one beget presumption — both are alike to be avoided.

"Depend upon it, that vulgar thing called labor, pains, care and diligence, gives better security for success in the world — indeed, for the acquisition of everything good, than ability and learning. In your academical life you must have seen something of this value of application; the register is no index to the minds and talents of the scholars. The high marks

are given not to capacity, but to labor, attention and diligence in study. The world also keep a register, and adopt the same rule in marking. I hope you will aim at '8s,'[1] and 'highly creditable.'

"You will find the advantage of the modest self-estimate I recommend, in the very outset of your career. It will lead you not to despise employment as too low for your capacity and merits. Depend upon it, when you have exhibited to the world the evidence of your fitness for the highest employments, you will have them. But supposing your estimate of self to be a proper one, there is another error I have seen discreet and sensible young men fall into. I mean the too great hurry to seize the prizes — the rewards of labor before they are earned. I would have you earnest, zealous, ardent in the acquisition of all the good you propose to yourself. You should have praiseworthy objects always before your eyes, and diligently pursue them — you must never weary in well-doing, but at the same time you must moderate your expectations, and remember that a sanguine temper of mind is likely to end in mortification and disappointment, and so discourage exertions.

"No good thing is obtained without time. The best things are of the slowest growth. This is the order of nature, and you can hardly expect nature will change for your special accommodation. I have myself observed that those who hasten to be rich and learned, in the end are poor and ignorant.

"But there is another thing in which I am not

[1] The highest mark at the academy.

without suspicions of you. I mean an unsteady, wavering temper of mind. You may have obstinacy enough when you happen to be in the wrong, but have you firmness and perseverance enough when in the right? I have known persons not wanting in judgment, but who were constant in nothing but changes — ever adopting new courses of business — rying them for a short space, but not giving them a fair trial, and then abandoning them for some new project. This is a very great as well as a very common error, and accounts for many of the failures in life I have witnessed. Be slow in adopting your plans — carefully observe their working, and persevere in them till your judgment is clearly convinced. I have seen a laborious and painful life wasted — all for the want of a little more 'patient continuance in well-doing.'

"I have recommended to you a just opinion of self — rather too low than too high — but the case is different as it regards the opinions you form of others. Here it is better to err on the other side. Charity and politeness require you should think favorably of your acquaintance; and where you cannot do this be sure to keep your thoughts to yourself. This temper of mind is perfectly consistent with personal independence and decision of character. You must on no account sacrifice these. There is a satisfaction in them which the wavering, and unsteady, and infirm of purpose can never know.

"As a youth, your deportment, as far as I know, has always been distinguished for modesty and civility, especially towards the aged. When I see the

reverse, as I often do, I augur ill of the youth: and have seldom seen him grow into a respectable man.

"It is, perhaps, strongly enough expressed already, that I would have you active, industrious, wide awake. You have hitherto hardly had an opportunity to test your active powers, mental or bodily. I hope you have a good share of them. There is now a call for them. You must now depend on yourself, and be assured if you sleep you perish. You will at first find yourself a little awkward in your new situation — no one to advise — to remind — to direct — no arm but your own to lean on. I have seen young men so situated, pursue different courses: one class girded themselves for the race — put out all their strength, and though from inexperience committing many errors, yet daily rising in the world, and finally attaining a high character and a respectable place in society; — the other class, from timidity, love of idleness or from something worse, soon sinking into disgrace, and becoming members of thât class, who prefer living upon others, to earning a living for themselves. Idleness is the ruin of more young men than any other sin that besets them, or than all others put together; indeed, it is not long a single vice. It draws after it a thousand others. The idle fellow must have company, and his companions will be sure to be idle fellows like himself. The excitement of drinking, if excitement it may be called, will soon be resorted to, and every other kind of dissipation will soon be added thereto. When I hear you are idle — destitute of employment — are rambling about from place to place under pretence of seeking it, I shall

have before my mental eye a complete map of your whole life. I shall see the end of the man, in whose welfare I have taken so deep an interest. It must needs be that you will come in contact with the dissipated. Shun them as you would persons infected with the plague. You must have seen in the academy many young lads of good parts, who have suffered disgrace from this cause alone. It has always appeared to me wonderful that idleness should seduce any one. To me it has seemed ever odious and disgusting. A lazy man is my utter aversion.

"On reading this to Mrs. Smith she desires me to add to the catalogue of 'the *evitanda*,' the dangerous practice of running in debt. She would have you avoid debts as you would any other kind of servitude. I have known many who might justly ascribe their ruin to this practice. It includes (and I would have you exclude) all kinds of speculation. Get what you get by honest labor and honest business. A little thus gotten is better than a mickle got by speculation. This has always been my way of thinking. I believe I never speculated to the amount of a single dollar, for which I desire to be thankful to a kind Providence.

"I recommend to you early to acquire the habit of economy, whether your gains or means be great or small. Indeed, in this way a small estate answers all the purposes of a great one. And connected with this, I would have you cultivate habits of order and care in all your business and concerns. The way to grow rich is not by earnings, but by careful keeping and prudent spending.

"I have said nothing of religion and good morals. Attention to them is indispensable. You cannot do without religion; and if, haply, you find the right sort, your morals cannot fail to be pure and good.

"I can only add that as to these loose hints, drawn up without any regard to order or method, I expect little from them. I rely much more on your own good sense and good habits to conduct you in the paths of wisdom and prudence.

"If you have any desire to repay the little I have done for you in the last fifteen years, there is no way in which you can do it so much to my satisfaction as by continuing to act wisely and discreetly for yourself.

"Be an honest and virtuous man, and I shall be proud of you, and continue to pray that God may bless you and preserve you here and hereafter. 1st October, 1840."

To Mrs. Smith. "Tremont House, Boston, 16th May, 1841. Sunday, P. M. My dear wife: Mr. F. called immediately after dinner, and deprived me of the afternoon service. He is just gone, and I devote half an hour to thee. I am sure it is spending my time well, for there is no evil connected with so pure a subject. I heard an excellent sermon this morning from Mr. G., on the evils and dangers of wealth, and rejoiced that I was safe on that score. I am not sure I should maintain my integrity when tempted by riches. . . . . I find not a single companion in this great house of eighty or a hundred. The city is as quiet as the grave. These two days have refreshed me mightily, and I am very, very well.

. . . . I find I have lost all my ambition. I used to desire to make a favorable impression on my Boston friends. Now I am quite indifferent — not that I love them less, but myself more. I believe age is selfish. There is little to stimulate desire; but I do not love you the less, and shall appreciate Exeter the more from this little excursion."

To Miss Ellen Smith. "Exeter, 29th October, 1841. Only think, dearest Ellen, I have not seen you for a whole year, and how great a proportion does this same year bear to my whole life to come. The tables of life give a fraction only above three years, and it may prove less than three days. I beg you would consider this seriously, (for it is a serious thought,) and act accordingly. I suppose there is nothing strange in the fading away of my desire for locomotion. I certainly intended to visit Peterborough in the autumn. The indisposition of my friends with you, as well as my own prevented, and I have now half persuaded myself that all old creatures are best at home. Perhaps my conclusion, that therefore you must come here, is not strictly warranted by the premises. I have a fancy that I am most agreeable at home. Come then, my dearest Ellen, and make us happy, if only for a month. Leave all your duties and cares with Sarah. Your modesty will not allow you to think these duties will be worse discharged. The more I see of her, the less I should be inclined to fear it. It is, besides, selfish in you to engross all these amiable virtues. Let all your friends participate in your enjoyments. A good lawyer would make more of the argument. Think of the

pleasure you would give Mrs. Smith and Jeremiah, and how useful your society would be to Jane."

"I ought, my dear sir," he said to another correspondent, 13th November, 1841, "long since to have acknowledged your letter. This duty has often been in my mind, but its effectual performance depended on another thing, and that has been neglected. It is indeed a poor excuse for neglecting this, and yet, somehow or other, when we have two connected duties to perform, we are apt to neglect one because we have neglected the other, and feel easier under a double than under a single fault."

In a letter to Mrs. Smith, written about the same time, after mentioning some unkind words which had been spoken years before, he adds: "Provoking this, and now remembered. Would it not be for the peace of the world to have an act of oblivion passed every six years, corresponding with our statute of limitations? —— was to deliver a caucus speech, &c. How much good temper have I gained or kept by the little interest I have taken at all times in politics. I suppose I could not have done it, if I had not taken a great deal of interest in something else, that was, my profession and a moderate provision for age and family."

To Miss Lowe. "22d January, 1842. My dear Mary: I was sick, and you visited me not.

"The contrast. Three days ago, when alone in my room, and engaged in adorning myself, my eyes on the glass, a female figure entered, and seated herself on the other side of the table. I supposed it was Jane, dressed for the village, and wait-

ing for my commands; but a second glance showed a figure and dress of higher pretensions — the person a stranger. My curiosity was a little excited, and I addressed the beautiful unknown. She spoke in a disguised voice. I begged her to remove the veil, which she did, and behold S. S. H. stood before me. She had heard the day before that her friend, the Judge, was sick; her call was the consequence. She found her friend relieved from the first indisposition, but so blind with sore eyes, that he could hardly see the bright vision before him. She returned the same evening.

"Mary was 'intending to write sooner; doubts whether she will be able to stay away three months longer; her time is now wanted to read novels to Miss C.,' &c. These are my female friends. Your sex, you know, is a thousand times more compassionate than mine. For your, read some of your sex; for example, Ellen the good. 'I was up this morning long before the sun, that I might write you before the mail goes out. I regretted exceedingly to hear that you were afflicted with another of your severe colds. How much I wished to be with you, and particularly at a time when I could be useful to those I love.' Was it not Mrs. M. who said 'there is a difference in women?' I will not offend against my judgeship by a hasty decision. The appearance of things, as it regards affection, is certainly against my Mary. But no doubt, (at least I am willing to believe so,) she has good reasons for her conduct. I have been really and truly sick, and my eyes yet leave me entirely at the mercy of Elizabeth and Jane for food for the

mind. They are very, very good, but both afflicted with bad colds."

To Miss Hammond he wrote, January 24: "How shall I thank you as I ought, for your visit of Wednesday? If good acts carry their own reward, you must be doubly happy. I am, in consequence, quite well, with the exception of two eyes, that have already seen their share of earthly good."

On the 7th of February, 1842, Judge Smith sold his place in Exeter, possession to be delivered the 1st of April. To some of his friends, it was hard to think of the alienation of an estate which had been, in their minds, associated with him for so many years, and made sacred to them by the memory alike of the living and the dead. He thought himself indifferent to the change; but in this respect I do not think he understood himself. In a letter written a few days before the bargain was concluded, he said: "Everything goes on as it should. The nights are not quite so well. I do not sleep. The meditated change in domicil, in spite of my fixed, stayed, and approving judgment, will, against my will, keep me awake after the first sleep." His reasons for what he had done, are best given in his own words. In a letter to Miss Hammond, February 10, 1842, he said: "My dearest Sarah: I need not attempt to say how much I am gratified by yours of the 8th, this moment received. I was at the time about to sit down to write to you, and tell you what I had just done; something of importance to me, and more to my Elizabeth. The law (of nature) says, that my lease of life must expire soon, very

soon ; and wisdom, divine and human, says ' Set thy house in order, for thou shalt surely die.'

" You know I am happy in my dwelling, and that I desire no change, especially when you are in it ; certainly none on my own account ; but it would be a great shame in me not to have the most lively, as well as the most kind regard, for those of my family who will doubtless survive me. Solely and entirely on their account, I have sold my house and farm, and am to surrender possession the 1st of April coming. ' To what place are you going ? ' I hear my Sarah ask. I cannot tell. To a hired house (the apostle, you know, lived in his own hired house,) here ; and in due time a snug little cottage in the village, to my native place, or to Elizabeth's native place and her father's house ; so far is decided. To which of the three, I have left entirely to Elizabeth, and I have no doubt she will decide wisely. To me place is indifferent, so it be with my nurse and child."

To Miss Ellen Smith. " Exeter, February 20, 1842. My dearest Ellen : This is not a letter, but a few lines to explain to you the reasons of my selling the house over our heads — to quit 1st April. It was not because I was dissatisfied with it — it was exactly what I had made, and exactly to my mind — but solely because I thought it would trouble those I leave behind. For the same reasons I left it entirely to Elizabeth to say, where she would nurse me in the short remainder of life, and for the present she fixes on a part of her father's house at Dover, and thither we go in about four weeks. The other alternatives

were to build a small house here or at Peterborough. This is the second wise thing I have done in my long life. The first was to leave off business at a proper age (sixty); and this, to consult at a slight expense to myself, the interest and happiness of those dear to me, now and in all time to come. This removal will, of course, detach me from the bank and the academy, and leave me nothing to do but to visit you often at P., and, I hope, welcome you often at Dover.

"You, my dearest Ellen, are one of the few whose approval of every step I take I desire. I am sure you will understand my motives, and I shall grieve if you do not approve of my small sacrifice of my present happiness to the greater good of wife and child. I am not sure there is any sacrifice; for, phrenologically speaking, I have no bump of locality.

"Have the goodness to show this to the good Mrs. W., and such other of my friends who take an interest in my doings, and are so good as to believe a man may act on such motives. If I have committed an error, it is of the judgment; selfish motives have had no influence in this fifth and last act of my life. God bless you, my dear Ellen."

In a letter to J. H. Morison, begun the 23d and finished the 28th of March, he said: "I am at the Swamscot, in my own hired room, since yesterday, when I gave Elizabeth, Jeremiah, Ann and Lizzy Saul (a favorite domestic,) to the cars for Dover, never to return, except as visiters, to Exeter. The fires were extinguished the same evening, and a watcher placed in the house, to wait the arrival of

J. L. Cilley, the new owner, who, with his family, entered into full possession this morning. As our worthy old acquaintance, the Public, are generally ignorant of the motives which govern the poor culprit at their bar, and of the circumstances of the case, is it to be wondered they generally judge amiss? I have sent a *memoir justificatif* to Peterborough, addressed to my friend Ellen. If I had the rough draft before me, I would merely copy it for you, whose good opinion will be an object of desire, when houses and lands are gone.

"The tables of life give me only an equal chance for two or three years. I have no reason to doubt they will be happy years anywhere on this globe of ours. Locality I have none; but it occurred to me, it would be cruel to leave Elizabeth and her son (then of seven,) in a house and on a farm, which to neglect is to ruin, both in looks and value; tormenting the possessors, while the process of deterioration is going on, and the loss of the house and farm carrying with it the probable destruction of their other inheritance. I easily persuaded myself that it was my duty to sell my dirty acres myself, vest the proceeds in the safest way I could, and live, in the English style, on our income, surrendering to younger men my bank and academy duties. While I remained in Exeter, I could not easily do so. Hitherto I have not been sensible of any material lack of business capacity; but that may come at any moment, and must come soon. It is quite time to reduce the points of contact with the world as far as possible.

"Mrs. S.'s father and sister, ever since Mrs. Hale's death, last June, have needed Elizabeth's aid. There is an excellent house, large enough for us all, and Mr. Hale says I may fit up a room to my own liking, and dwell there in peace and comfort, surrounded by my old and well-tried friends upon the shelves.

"I never was an anxious man, and as the world recedes I shall not court it, but content myself with being a looker-on. Your old friend —— ——, lately died, much reduced in his moral and religious man; his latter days were spent in the struggle to increase his estate, by vexing his poor neighbors. I have no desire to increase my little substance. It is enough, and I will try to enjoy it as an octogenarian ought. I have been governed in these late movements solely and entirely by a sense of duty. I need not say I am happy; for you know how happy the performance of duty makes us all. I never stepped out of my house with more pleasurable feelings than I did Monday evening, or more in charity with all the world, no way anxious about the few days to come. I am almost ashamed to say how few are my doubts, as to the remnant of my long life. 'I have set my house in order.'"

Judge Smith had now removed to Dover, and found himself pleasantly established there. He endeared himself to the members of the family; his intercourse with Mr. Hale was exceedingly pleasant to them both, and his society was sought and valued, especially by the young. In the language of one[1]

[1] The Hon. John P. Hale, whose independent and manly course, in respect to the extension of slavery, by the annexation of Texas, must do him infinitely more honor than the possession of any office.

who saw much of him at that period, "There was a beautiful moral sublimity in the spectacle, exhibited by the sage of a preceding century, who had counselled with Washington and his compatriots, all long since entered upon their reward, about the momentous interests staked upon the experiment of putting in operation the moral and political machinery of a new government, relaxing and unbending his giant mind, to join in the innocent pleasures to be found in the society of the young, without abating aught from the real dignity of his character."

An article on the judicial appointments of John Adams, which appeared about this time in the Boston Daily Advertiser, and written, evidently, by one eminently qualified to write on such a subject, is marked by so true and affectionate a spirit, that I cannot help inserting here so much of it as relates to Judge Smith, though I do not know the name of the author. After speaking of Elijah Paine, John Marshall, Bushrod Washington, John Davis, and William Cranch, all of whom had been placed upon the bench by the elder Adams, it goes on thus: "There is yet among the living another object of Mr. Adams's regard, and of his selection for judicial place, whose idea brings to many who have long known him a rushing crowd of grateful and affectionate feelings. He was in congress in Washington's time, and one of his greatest admirers 'this side idolatry.' The daily companion and bosom friend of Ames, the cotemporary of Madison and Giles, of Boudinot and Bayard, of the Pinckneys, and Laughlin Smith; and the familiar associate of King and Cabot. I mean Jere-

miah Smith, of New Hampshire ; and let it be said to her praise, that she early discerned his worth, and gave him her confidence. Richly did he return honor for honor, and distinction for distinction. If the recent and the present cannot be looked upon with satisfaction, let him, and let others, feed on the rich recollections of the past. Having been district attorney for New Hampshire, he became, by Mr. Adams's appointment judge of the circuit court, and held the place during the continuance of that tribunal, and afterwards for many years chief justice of the state. He is now enjoying, at advanced age, life, and literature, and law, with as much zest as others who have not numbered half his years. You and I saw him, not many years ago, in a circle and on an occasion which called forth the exercise of his powers, and deeply affected the sympathies of all around him. I have witnessed nothing superior to the pathos with which he then addressed us. Indeed there is nothing which strikes the human eye and the human ear, nothing that touches every deep-toned key of the human heart, more than 'an old man eloquent ;' eloquent with high truth, eloquent in the manifestation of the rich fruits of experience, and in the valedictory character necessarily belonging to all he says ; eloquent in nervous, manly, strongly conceived thoughts, uttered with glowing warmth, though by a voice not free from tremulousness, and with an eye sparkling through the moisture of age. Such he then appeared to us ; and if we may not hope to see him again, under circumstances so affecting, yet let

us hope to meet him in more private scenes, in health and spirits, and in the perennial flow of that wit and pleasantry which so much distinguish him. A grateful junior may say to him, 'guide, protector, friend,' *serus in cælum redeas.*" [1]

I have purposely deferred speaking of Judge Smith's religious investigations, opinions and character. He had been educated as a Scotch Presbyterian. His parents, his religious teachers, his early associates, and the college at which he was graduated, were of that denomination. He seems to have been set apart by his friends for the ministry, and on many accounts that would have been the profession of his choice. He early committed to memory large portions of the Scriptures, and the favorite studies of his youth as well as of his riper years, were on theological subjects. He was not unacquainted with the great divines belonging to the early age of the English church; with Hooker, Chillingworth and Jeremy Taylor; but the writers of a succeeding generation, though less comprehensive in their intellectual grasp, were more to his taste. He was familiar with the works of Tillotson, and South, and Seed, and Secker, and acknowledged his obligations for the important aid he had received from King's Essay on the Origin of Evil. Sherlock, he used to say, was too ingenious, and Horsley too learned for him; the discourses of Porteus he read with pleasure, and Blair's Sermons, by their purity of style and sentiment, made up in

[1] Since writing the above, I have heard the article attributed to Mr. Webster.

some measure for their want of strength and solid instruction. Bishop Butler, however, from his clear, strong, unanswerable reasoning, and his profound knowledge of human nature, and the laws of God as unfolded in harmonious correspondence through his word and his works, was the divine whom he preferred to all others, and down to the latest period of his life, he continued to read his sermons again and again, and always with new admiration.[1] While in congress he heard Dr. Priestley's Lectures on History, and was deeply interested in them, though I do not think that he valued Priestley very highly, as a writer. Thrown into public life at a time when society throughout the civilized world was shaken to its centre, and all the old landmarks of belief were held up to contempt by those who would themselves be regarded as the light of the world, he read the works of unbelievers, and though sometimes charmed by their fascination of style, he subjected their reasoning to the cool, impartial, searching scrutiny of a judicial process, applying to the evidences of Christianity, the severest rules of testimony. With him, as it had been with Judge Parsons, after a similar examination, the result was a clear, undoubting conviction of the truth and genuineness of the gospels.

But the more he thought and studied on religious

[1] Judge Smith quoted with approbation this remark: "Everybody should read Bishop Butler's Analogy once a year till he can understand it, and once a year afterwards to enjoy it. You talk of the wealth of the Church of England, but if all the revenues of the See of Durham from the Conquest were accumulated in one vast sum, the whole would be of less value than that inestimable work."

subjects, aided in his inquiries by the ablest writers, the more comprehensive was his creed, and the less importance did he attach to any peculiar form of faith or worship. He had been charmed by the youthful and sainted eloquence of Buckminster. His soul was moved to its depths, and lifted up as into a purer atmosphere, by the writings of Channing. He used often to tell of hearing him preach many years ago on humility. "When he announced his subject," said he, "I thought that I was safe; that it might be a very instructive sermon to others, and entertaining to me. But in a few minutes, to my surprise, I found that I must plead guilty to that count in the indictment, though very sure that it must be the only one. But as he went on, I was obliged to give up point after point, and at last came away mortified and humbled at the consciousness of my own pride." Not long before his death, he happened to remain at the communion service, which was administered by Dr. Channing, and "whether it was," he said, "something peculiar in my feelings at the time, or in the expression of him who broke the bread, I had never before so entered into the spirit of the service." He was also delighted both in public and private, with Bishop Cheverus, of the Roman Catholic church, whose self-denying and devoted labors for his "few sheep in the wilderness," he had witnessed while spending several weeks on business in the lower part of Maine. He remembered as long as he lived the interest with which he had listened to a sermon by the Rev. Dr. Alexander, of Princeton. He was greatly entertained by the preaching of Dr. Beecher;

and though he could not assent to all the doctrines it contains, held in high regard the Book of Common Prayer. In speaking of the Burial Service, he once said, that to have it read at his funeral was almost enough to reconcile one to dying.

Judge Smith believed that there was, in the death of the Saviour, a significance not only deeper than that which is attached to the death of any other teacher from heaven, but different in kind. As to the nature of Christ, he dissented equally from those who consider him only as a man, and those who worship him as God; agreeing with Milton in regarding him as the greatest of created beings, "the first-born of the creation of God." In his theological opinions generally, I think he more nearly agreed with the matured views of Milton, than with those of any other writer. He belonged to the true catholic church, and was ready to acknowledge any man as a Christian brother, who received the Scriptures as his rule of faith, and who strove to mould his life by their spirit. "Yes," he was accustomed to say to zealous but narrow-minded young men, "that is all very well. It is the way for you to go, if you so believe in your heart. But it is not the only way." And as he grew in years, and his faith was purified and strengthened by trial, he became still more catholic in his feelings, attaching more importance to Christian fidelity, and less to the formulas of creeds, and the rules of church discipline. Just in proportion to his acquaintance with their practical effects was the low estimate he put on all ecclesiastical tribunals, and particularly those existing in New Eng-

land; where men come together on business wholly foreign to all their studies and pursuits, with no fixed statutes, no authoritative decisions, no established usages or fundamental principles even for a guide, and knowing neither how to examine witnesses, nor what sort of testimony to admit. "I have heretofore supposed," he said in one of his latest letters, "that nothing could happen to place the New England ecclesiastical judicial character lower than I esteemed it; but I find in the lowest deep a lower deep."

No one could more respect the institutions and ordinances of religion, or acknowledge more sincerely the necessity of a religious character and faith. But religion he did not regard as something apart by itself. It must, he thought, be inferred from the general tone and complexion of the life. If its power is in the soul, it will breathe out and make itself felt. He believed it a progressive principle, growing from day to day, especially through trials and sorrows, and subduing the whole man — thought, affection, conduct, will — more and more to itself. So he believed, and no one, I think, can read his life in a truly Christian frame of mind, without recognizing something of this spiritual progress in his own character. Let any one compare, for instance, the letter of consolation which he wrote on the death of his brother Robert, in 1795, with that which he wrote to Mrs. Walker, on the death of her son in 1840. The one is very well; such a letter as an intelligent man, who had attended to the subject, might write; but the other no one would have written, who had not felt in his own heart, a divine consolation and strength. In

like manner his affections were all softened, enriched and mellowed as by the influence of a higher and better spirit. He had been supported through the heat and burden of the day; his religious trust added its brightness to the cheering prospects that welcomed him home to his retirement from his active duties; and when the heaviest domestic calamities, one after another, in quick succession, fell upon him, till he was stript of all his friends, and left a solitary old man, his cheerful confidence in God showed that the consolations of a religious faith came to him not as strangers, but as friends whom he had long entertained and loved. Only one other test now remained, and to that he was rapidly hastening.

On the 26th of April, (1842), his brother Samuel, who, from the failure of his intellectual faculties, had for several years been but the wreck of his former self, was set free from his sufferings by death. In the letter which the Judge wrote to Ellen, dated Dover, 29th April, 1842, he said, "I need not tell you, my beloved friend, that your mother, sisters and yourself have my deep-felt sympathies on this melancholy occasion. I am obliged to use the same words others use; but I beg you will believe that my feelings towards you and the family are not of the common kind, and are such as I have seldom before experienced. They are such as my love for you cannot but inspire. I am not ignorant of your great labors and sufferings, and have been extremely anxious lest your strength should fail. It must be a source of heartfelt gratitude to my Ellen, that Providence has enabled her to fulfil all her duties. What daughter

has done so much? Your retrospections must be of the purest and most enduring kind. When the painful part ceases, may the pleasant go on increasing to the end. There are moments now when I regret that I have been absent from Peterborough so long. We must draw closer together as time diminishes our number. . . . . Believe me, though sick in body, present with you in spirit, and always your most affectionate uncle."

Judge Smith visited Peterborough in June, and returned from his excursion in excellent health. Writing to a friend soon after his return, he said, "You have heard me speak of, and indeed have seen my niece, Ellen S. Domestic affliction did not make her less interesting. . . . Who can love sons as they do daughters? Not I. No disparagement to Jeremiah. You see I have Mrs. H. and her six daughters (C. no less a daughter for being a good wife,) in my mind and in my heart. May it ever be so. A bad heart would be mended, and in time changed, in such society. But may none such enter this pure sanctuary of love and all that is good and amiable."

The last time I saw Judge Smith was early in July, 1842, when I spent a day or two at Dover. He seemed in excellent health, and never with his wits more about him. There was perhaps no man living, who had at his command more local and personal anecdotes, or more of the knowledge not to be found in books, particularly in relation to events, or to the men who, whether on a large or a small scale, had figured in our country from the middle of the

last century. He seemed never to forget what he had once known, but remembered, with extraordinary distinctness, minute particulars in the family history of indifferent persons, with whom he had little or no personal acquaintance. The most remarkable thing in his memory was that it not only went back, and called up, as from the dead, events in which he had been interested, or subjects which he had studied years before; but recalled as vividly recent impressions and what he had recently read. I found him in the cars at Exeter. On arriving at the depot in Dover, there were two or three young ladies waiting for him, and before reaching home he was joined by perhaps twice that number, who had come out to meet him. He appeared in excellent spirits; in a new place indeed, but with those to whom he was warmly attached; "surrounded," as he said, "by his old and long-tried friends upon the shelves," seeming perfectly at home, "in charity with all the world," and "in no way anxious about the few days to come." There was no diminution of interest in books, and in talking of such as he had recently read, there was evinced no falling away of memory, nor was there an indication of failure in any of his faculties, bodily or mental.[1] "He was quite willing," he said, "to be *cipherized*," and he fell into

[1] "A little before his last illness," said Mrs. Smith, "J. S. for the first time asked me to nib his pen for him. Sometimes, within a few years, a sudden film would come over his eyes. The same is mentioned of Mr. Roscoe, within, I think, two or three years of his death. We do not attend enough to these indications of the breaking up of the constitution."

his new way of living with as much ease as if he had been twenty-two, instead of eighty-two.

In a letter, dated July 13, he said, "I am quite well and happy in reading Dr. Emmons's autobiography. I think my forte is allowing myself to be happy in the way Providence pleases, and not insisting on choosing the way and manner for myself."

The next day, in reply to a letter from Mr. Sparks, asking "whether Washington ever wore a wig," and giving him some valuable historical information, he said, — "Dear sir: It would give me great pleasure to be able to put an end to the doubts on the wig question. I was in the habit of almost daily seeing Washington, from 1791 to 1797; staid a night at his house in April in the latter year, and it never entered my mind that the great man did not wear his own hair. No man was ever more attentive to dress, or had better taste. The earlocks were generally or always dressed, frizzled and powdered. I can remember when this was the fashion. I am a careless observer of particulars, as it regards the face, eyes, hair; I never could testify as to the color of eyes. My impressions are decidedly all anti-wig.

"I rejoice at your success in collecting materials for a history of our revolution. I hope you will lose no time in working them up, that I may have the pleasure of reading the work. With much respect and esteem, I am, dear sir, your obedient servant."

From a note to his wife a few days later: "We are as silent as the grave, to which some of us are hastening. . . . I must devote next week to business, but intend to do all things with moderation; for in truth

my task is easy. I have never suffered things to dam up. . . . I am lonely, but not unhappy."

His private affairs were all arranged as he thought would be best for his wife and child. He resigned the office (which he had held thirty-nine years) of president of the Exeter Bank. Mrs. Smith was staying at Lee, and in the latter part of the week he went from Dover to Durham in the cars, thence walked to Lee, a distance of two or three miles, passed the day with her, was all gaiety and animation, and returned in the evening the same way. After his return, he said, in what proved to be his last letter to his wife, "You know Monday is my day for Exeter. I am busy in my preparation for my last official act. Heaven bless you and Jeremiah, prays your husband."

On Monday he went to Exeter, to meet the trustees of the academy, and on his return was so unwell that he wrote the following letter — the last he ever wrote: "To the Trustees of Phillips Exeter Academy. Gentlemen: I find myself at length compelled to abandon the hope of meeting you on Thursday, and accordingly now resign both my offices of trustee and treasurer. I had intended to accompany my annual accounts with statements and remarks, as my manner has been, and if sufficient health shall be indulged me, will take the earliest opportunity of doing so.

"I shall ever retain the liveliest sense of the kindness, courtesy, and I may add the confidence, I have at all times experienced in connexion with you. I pray heaven to guide you in all your future delibera-

tions, and that you may continue to execute your sacred trust with diligence and fidelity."

Wednesday a physician pronounced his disease a slow fever. For two or three weeks he was able to be dressed, and sit up part of the day; many times every symptom would be favorable, and then again new and distressing pains would arise. His sufferings were exceedingly acute. But he did not complain enough to make his case fully known to his physician, and his humor remained with him to the last. Mrs. Smith having once been called below to see some one whom he thought more flippant than profound, said on her return, "He promised not to detain me, but he did, and I verily believe, that when he begins to talk, his tongue runs so fast he cannot stop it." "It may well run fast," said the Judge, "it carries little weight."

On the 15th of August his brother James, of Cavendish, Vermont, the father of Mrs. Walker, died at the age of eighty-six, and eleven days after he was followed by Mrs. Walker herself; the woman so dear to Judge Smith, so beloved, so rich in all the best affections and charities of a Christian life. On the 29th of August, Judge Smith's only surviving brother, Jonathan, a man in whom all the elements were most kindly mixed, for many years a pillar of the town, and who had seemed as much a part of it as its hills, was suddenly taken away. It was some time before Judge Smith was informed of their death. But one day, when he seemed unusually strong, and made some inquiries about Mrs. Walker, he was told that she was gone. He seemed moved, but agreed

with Mrs. Smith, that no one could do so much for others without destroying her own life. He then asked about his brother Jonathan, and, on being told that he was no more, he replied with much emotion, "Well, he was a good man, and lived to a good old age. I wish I was lying in the quiet grave with them." He afterwards expressed his thanks, that Mrs. Walker's father still had a son to watch by him, and when told that he too had been taken, he replied with earnestness, "Good! blessed be God."

From the beginning, even when the symptoms of his disease were not particularly alarming, he seemed to have a strong presentiment that he should not recover. Once, on his wife's reading to him something of his which she had just written down, he said with great solemnity, "Perhaps this is the last saying of mine that you will ever record." Two or three weeks before his death he sent for her in the night, and said, "Elizabeth, you will find me much altered; I am going very fast, and I want you to thank God for it."

During his illness he was tried by excruciating pains; but no one heard from his lips an impatient word. One night, while suffering severely, and after having said but little for some time, he repeated distinctly, and with that perfection of emphasis for which he was so remarkable:

"God of my life, look gently down;
Behold the pains I feel;
But I am dumb before thy throne,
Nor dare dispute thy will."

To the domestics, who waited upon him, he showed always a sense of gratitude for their kindness. "May God reward you," he said, "for your attentions. I will do what I can." He had no fear of death. "I have long," he said, "considered myself a minute man, like the soldiers in our revolutionary war, ready to go at a moment's warning." Death was familiar to his thoughts, and not to be viewed with alarm, but as the beautiful dispensation of God. On being asked, the morning before he died, whether he had any fears, he replied, "no, no."

Mrs. Smith was prevented by a fever from being with him the last two or three days of his life. When his nurse, a devout Methodist, repeated to him, a few hours before he died, the oft-repeated words,

> "Jesus can make a dying bed,
> Seem soft as downy pillows are,"

he four times made a motion of assent, and when she completed the stanza,

> "While on his breast I lean my head,
> And breathe my life out sweetly there,"

he again, though he could not speak, inclined his head four times, and smiled with evident pleasure. He died Wednesday evening, September 21, 1842. His head had just been lifted up; he looked upon his friends with a placid smile, which seemed like a parting benediction, and went away so quietly that no one knew when he ceased to breathe.

"Well over is a good thing," was the last comment signed by his initials in his common-place book, and it might have been inscribed upon his tomb. Having finished his active duties, he had retired from the world, to live for a time in the affections, in the knowledge gained through his long experience, in his serene temper, and the heart-felt experience of the divine goodness. Before these resources had begun to fail, he was called away. Calm and peaceful was the going down of his autumnal sun, and when it was set, rich and golden memories lingered round its path. There is, in truth, nothing sad in the beautiful and fitting close of a life so filled out and complete in all its parts. And yet how many are the feelings that are touched, as we bid farewell to one of the last of those great men, who laid the foundations of our government, and so manfully upheld it in the first days of its peril. May there never be wanting others of like character and strength to stand by it in every hour of its need!

Judge Smith's aversion to show he carried with him through life, and wished it to be avoided in everything connected with him after death. According to his request, his body was buried in a space which he had left between the graves of Ariana and her mother. On a plain marble head-stone, "neither better nor larger" than those which he had procured for them, is the following inscription, prepared by his friends, Daniel Webster and George Ticknor:

HERE REST THE REMAINS OF

JEREMIAH SMITH:

IN EARLY YOUTH,

A VOLUNTEER IN THE CAUSE OF THE REVOLUTION,

AND WOUNDED AT THE BATTLE OF BENNINGTON;

AFTERWARDS,

A REPRESENTATIVE IN CONGRESS BY THE CHOICE OF

THE PEOPLE OF NEW HAMPSHIRE,

AND AN ABLE AND EFFICIENT SUPPORTER OF THE MEASURES OF

WASHINGTON;

A DISTRICT ATTORNEY OF THE UNITED STATES, AND

JUDGE OF THE CIRCUIT COURT, BY THE

APPOINTMENT OF WASHINGTON'S SUCCESSOR;

IN YEARS YET MORE MATURE,

GOVERNOR OF NEW HAMPSHIRE,

AND

TWICE ITS CHIEF JUSTICE:

HE WAS, AT EVERY PERIOD OF HIS LIFE, WELL DESERVING OF HIS COUNTRY BY HIS COURAGE, HIS FIDELITY, AND HIS DEVOTEDNESS TO THE PUBLICK SERVICE; EQUALLED BY FEW IN ORIGINAL POWER, PRACTICAL WISDOM, AND JUDICIAL LEARNING AND ACUTENESS; SURPASSED IN THE LOVE OF HONOR, JUSTICE AND TRUTH, BY NONE.

HE WAS BORN AT PETERBOROUGH, NOVEMBER 29, 1759, AND LIVED IN EXETER FROM 1797 TILL A FEW MONTHS BEFORE HIS DEATH, AT DOVER, SEPTEMBER 21ST, 1842; ALWAYS MOST LOVED IN THOSE CIRCLES OF DOMESTICK AFFECTION WHERE HE WAS BEST KNOWN, AND ALWAYS A CHRISTIAN, BOTH BY HIS CONVICTIONS AND BY THE HABITS OF A LIFE PROTRACTED, IN EXTRAORDINARY CHEERFULNESS AND ENERGY, TO ABOVE FOUR SCORE AND TWO YEARS.

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